

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN § 3:21-CV-00259-DCG-JES-JVB  
AMERICAN CITIZENS, ET AL §  
§  
V. § 2:00 P.M. TO 6:00 P.M.  
§  
GREG ABBOTT, IN HIS §  
OFFICIAL CAPACITY AS §  
GOVERNOR OF THE STATE OF §  
TEXAS, ET AL § JANUARY 25, 2022

HEARING ON MOTION FOR PRELIMINARY INJUNCTION  
AS TO SENATE DISTRICT 10  
BEFORE THE HONORABLE DAVID C. GUADERRAMA,  
HONORABLE JERRY E. SMITH  
AND HONORABLE JEFFREY V. BROWN  
VOLUME 3 (PM SESSION) OF 9 VOLUMES

**APPEARANCES:**

**FOR THE PLAINTIFFS ROY CHARLES BROOKS, FELIPE GUTIERREZ,  
PHYLLIS GOINES, EVA BONILLA, CLARA FAULKNER, DEBORAH  
SPELL, BEVERLY POWELL:**

Mr. Chad W. Dunn  
Brazil & Dunn  
4407 Bee Caves Road  
Building 1, Suite 111  
Austin, Texas 78746  
(512) 717-9822

and

Mr. Mark P. Gaber  
Mark P. Gaber, PLLC  
P.O. Box 34481  
Washington, DC 20043  
(715) 482-4066

and

Ms. Molly Elizabeth Danahy  
Molly E. Danahy, Esq  
P.O. Box 26277  
Baltimore, Maryland 21210  
(208) 301-1202

**APPEARANCES (continued):**

**FOR THE PLAINTIFFS ROY CHARLES BROOKS, FELIPE GUTIERREZ,  
PHYLLIS GOINES, EVA BONILLA, CLARA FAULKNER, DEBORAH  
SPELL, BEVERLY POWELL:**

Ms. Sonni Waknin  
Sonni Waknin, Esq  
10300 Venice Boulevard, Apartment 204  
Culver City, California 90095  
(723) 610-1283

and  
Mr. Jesse Gaines  
Jesse L. Gaines Attorney at Law  
P.O. Box 50093  
Fort Worth, Texas 76103  
(817) 714-9988

**FOR THE DEFENDANTS GREG ABBOTT, JOHN SCOTT, JOSE A.  
ESPARZA, STATE OF TEXAS, TEXAS LIEUTENANT GOVERNOR DAN  
PATRICK AND TEXAS SPEAKER DADE PHELAN:**

Mr. Patrick K. Sweeten  
Mr. Christopher D. Hilton  
Mr. Eric Hudson  
Mr. William Thomas Thompson  
Ms. Kathleen Hunker  
Ms. Courtney Brooke Corbello  
Mr. Jack Buckley DiSorbo  
Office of Texas Attorney General  
P.O. Box 12548  
MC 009  
Austin, Texas 78711  
(512) 463-4139

**ALSO PRESENT:**

Mr. Brian Christopher

Court Reporter:  
Laura Wells, RPR, RMR, CRR  
601 Rosenberg, Suite 615  
Galveston, Texas 77550

Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted transcription.

**VOLUME 3**  
**(HEARING ON MOTION FOR PRELIMINARY INJUNCTION**  
**AS TO SENATE DISTRICT 10)**

**Page**

**JANUARY 25, 2022**

Testimony of Dr. Matthew A. Barreto (cont).....	4
Videotaped Deposition of Senator Kel Seliger....	128
Reporter's Certificate.....	168

**ALPHABETICAL**

**WITNESSES**

**Page**

**MATTHEW A. BARRETO, Ph.D**

Direct Examination (continued) By Mr. Dunn	4
Cross-Examination By Mr. Hilton	37
Redirect Examination By Mr. Dunn	117
Recross-Examination By Mr. Hilton	125

**SENATOR KEL SELIGER**

Examination Offered By Mr. Dunn	128
---------------------------------	-----

1 **PROCEEDINGS**

2 JUDGE GUADERRAMA: Good afternoon, everyone.

3 Please be seated.

4 Let the record reflect Ms. Wells is taking the record  
02:00:13 5 for us, and Mr. Barreto is on the witness stand.

6 Mr. Dunn, it is still your witness.

7 **MATTHEW A. BARRETO, Ph.D,**

8 having been previously duly sworn, testified as follows:

9 **DIRECT EXAMINATION (continued)**

02:00:16 10 BY MR. DUNN:

11 **Q.** Dr. Barreto, for clarity of the record, we were on  
12 Page 9 of your report; is that right?

13 **A.** Yes. That's correct.

14 **Q.** I would like to zero in on Figure 3 of your report.  
02:00:30 15 What is it that you were depicting there?

16 **A.** This is a zoom-in of just Tarrant County and showing  
17 the many different Senate districts which come in and get  
18 parts of Tarrant County. I have attempted to label them,  
19 which portions of those districts; and as you can see  
02:00:55 20 here, there are portions of five different Senate  
21 districts that come into different parts of Tarrant  
22 County.

23 The map, similar to the previous maps we reviewed,  
24 uses the same red and green shading from Social Explorer  
02:01:12 25 to shade whether or not that is an Anglo or minority area.

1 **Q.** And for clarity of our record, what are the Senate  
2 districts that come into Tarrant County that take some  
3 portion of the minority population?

4 **A.** Well, the two largest are:

02:01:35

5 Senate District 9 in the northern part.

6 Senate District 10 in the southern part.

7 You can see on the east side of Tarrant County Senate  
8 District 22, which we discussed earlier, also comes into a  
9 large minority area.

02:01:54

10 Portions of Senate District 23 also come in from  
11 Dallas, cross the border into Tarrant County.

12 And then in the top northeast corner, Senate District  
13 12 stretches into a portion of Tarrant County.

02:02:19

14 **Q.** Do each -- well, on Senate Districts 12, 22, 10 and 9,  
15 do each of those take a significant amount of population  
16 from rural areas?

17 **A.** Outside of Tarrant County?

18 **Q.** Yes, sir.

02:02:34

19 **A.** Yes. They have portions of Tarrant County, which I  
20 would describe as quite urban and dense, but then are  
21 joined, in many cases, with other disparate rural  
22 populations.

02:02:53

23 **Q.** All right. And now we turn to the next section of  
24 your report that begins on Page 10 where you begin to  
25 analyze the racially polarized voting.

1           What is "racially polarized voting"?

02:03:13

2   **A.**   Racially polarized voting, which we abbreviate  
3 commonly as RPV, is a term that has come out of both the  
4 social sciences but perhaps more so the courts in  
5 interpreting voting patterns in vote-dilution cases; and  
6 it was a term that scientists and the Court used to  
7 describe voting patterns when they are very different from  
8 each other.

02:03:36

9           And the characterization of how and why they are  
10 different is that different racial groups are voting in  
11 very different ways.

12 **Q.**   Now, is it fair to say that the methods that social  
13 scientists have used to determine the existence of  
14 racially polarized voting have improved over time?

02:03:51

15 **A.**   Yes. We like to think in the social sciences that  
16 we're continually studying and improving the methodologies  
17 for assessing any question.

02:04:11

18           In this case, through the advent of statistical and  
19 computing power, a lot of our basic regressions have been  
20 able to become more powerful, more robust in order to use  
21 more computing capabilities to do things that would have  
22 taken days, if not weeks, to have calculated by hand, if  
23 at all, 40 years ago.

02:04:36

24           So the underlying theory of ecological inference is  
25 quite similar. We have just gotten more sophisticated in

1 the ability to be more precise and more accurate.

2 **Q.** At the beginning of sort of voting rights  
3 jurisprudence, how was -- in the 1960s and going into the  
4 1970s, how was racially polarized voting shown? What was  
5 the method?

02:04:54

6 **A.** One of the most common methods at the beginning, which  
7 is still used today, was called homogenous precinct  
8 analysis where rather than take all of the precinct data  
9 and put it into a regression, people would know from their  
10 local knowledge of the jurisdiction, and sometimes relying  
11 on census data, they would say these five or ten precincts  
12 are almost entirely White and these five or ten precincts  
13 are almost entirely Black.

02:05:11

14 Let's start there by just looking at the -- what we  
15 now call the tails of the distribution. Let's look at the  
16 places that are the most alike, where it's clear that one  
17 group is a majority; and let's say what was the average  
18 vote there as compared to all the way over here, what was  
19 the average vote.

02:05:29

20 And you could establish that in the early days that  
21 Blacks and Whites were voting differently. You didn't  
22 have an exit poll. You had a secret ballot. And so we  
23 didn't know.

02:05:43

24 And so social scientists, oftentimes historians were  
25 involved in this early work, would say, well, let's go

02:06:01

1 over to this part of town where we can all agree that  
2 these five precincts are very heavily Black and over here  
3 on the other part of town those five precincts are very  
4 heavily White.

02:06:14

5 We don't actually know how Black voters and White  
6 voters voted, but we can look at the precinct data because  
7 data are tabulated down to precincts.

02:06:30

8 And over here on this side of town, this candidate is  
9 getting 85 percent of the vote; and over here on the other  
10 side of town, this candidate is only getting 10 percent.  
11 And that was referred to as homogenous precinct analysis.

12 **Q.** What evolved from that methodology?

02:06:52

13 **A.** From there, we started to be able to account for all  
14 of the precincts, not just the homogenous precincts, and  
15 to say let's observe the change. Once we could get  
16 accurate data on the race and ethnicity, the demographics  
17 of that area where the precinct was located, let's observe  
18 all of the precincts -- let's say there were 100 precincts  
19 in a county -- and let's correlate the vote for the  
20 candidate with the demographics in the precinct.

02:07:09

21 And we were able to use simple methods at the  
22 beginning -- like correlation theory, ecological  
23 regression -- to just observe when the population changes.  
24 Even if you had a precinct that went from 40 to 48 percent  
25 Black -- so it wasn't homogenous. It was just in the

02:07:31



1 middle -- did the candidate vote go from 51 to 59 percent?  
2 Are we observing the same change? Are they correlated  
3 well together?

02:07:47

4 And so that really gave birth to the modern, more  
5 statistical analysis of racially polarized voting and  
6 ecological inference.

7 **Q.** And is that what you used here?

02:08:03

8 **A.** Here in this report I used the eiCompare software that  
9 I developed with Dr. Collingwood and applied the most  
10 modern methods that we could to understand voting  
11 patterns.

12 **Q.** And the data that you used in the eiCompare package,  
13 have you made that available to the State and their  
14 experts?

02:08:16

15 **A.** Yes, of course.

16 **Q.** The eiCompare software that you mentioned, is that  
17 also available to the State and its experts?

18 **A.** Yes. It's publicly available to anyone.

02:08:30

19 **Q.** Just a few more sort of glossary terms, and then we'll  
20 get into your results.

21 But what is -- what are the two words "ecological  
22 inference"? What do each of those words mean?

23 **A.** So we use it as a method of statistical analysis to  
24 say that -- the ecological units in this case are

02:08:46

25 precincts. They could be counties. In a state as large

1 as Texas, sometimes you'll see people put a very quick  
2 analysis together of the 250-plus counties that are here.  
3 Each one of those is an ecological unit, just meaning that  
4 it's a defined geographic area.

02:09:04

5 And the inference is that we're attempting to draw  
6 some inference, which we're attempting to glean a pattern  
7 across ecological units. As ecological units change, they  
8 become more heavily White, they become higher income, they  
9 become more heavily urban or rural. Whatever variable

02:09:26

10 we're interested in, you could apply ecological inference  
11 to attempt to determine if there is a pattern in this data or  
12 not.

13 In this case, I'm using precincts or VTDs.

14 **Q.** That's the ecological unit?

02:09:36

15 **A.** Correct.

16 **Q.** And what is a regression?

17 **A.** A regression is just an effort to, again, find a  
18 pattern across data and attempt to determine whether or  
19 not the change or the movement in one variable is related  
20 to change or movement in a second variable.

02:09:55

21 And there are many different types of regressions that  
22 can be used. And essentially they attempt to either fit a  
23 line or other shapes that are not perfectly linear to see  
24 whether or not a pattern can be found, essentially a

02:10:23

25 correlation between these two data points; and that is

1 what we have done in this instance.

2 **Q.** Going to Page 11 on Figure 4, first, tell us what this  
3 is that we are looking at.

4 **A.** So this is one of the outputs of the analysis. In  
02:10:40 5 this case, it's what we call an XY scatter plot, meaning  
6 the X-axis and the Y-axis. And this allows us to look at  
7 the full range of data.

8 In this case, every single dot that you see on the  
9 screen or in the report is a precinct. It's the actual  
02:11:04 10 results of how that precinct voted in the 2020  
11 presidential election, and each precinct is indicated  
12 twice. We have indicated the percentage of the vote they  
13 gave to Mr. Trump, and the percentage of the vote they  
14 gave to Mr. Biden.

02:11:18 15 So we can just look at real precinct election results;  
16 and we can plot them along the X axis of whether that  
17 precinct is very heavily minority, which is over on the  
18 far left side of the screen, or whether that precinct is  
19 very heavily Anglo/White, which is over on the right side  
02:11:39 20 of the screen.

21 So it allows us to visualize the data to understand  
22 are there any patterns.

23 We can also look at homogenous precincts, as I  
24 mentioned before. We could look at the tails. Those are  
02:11:50 25 at the far left or the far right of the screen.

1        So I find that this type of output, this type of  
2 scatter plot is always the first place to start in  
3 visualizing the data and trying to understand the patterns  
4 in vote in any jurisdiction I analyze.

02:12:05

5 **Q.** What, if anything, can you conclude from this?

6 **A.** Well, in this case what we see in State Senate  
7 District 10, as defined in the new plan, there is an  
8 extreme pattern that is almost perfectly linear in  
9 racially polarized voting.

02:12:26

10        If you start on the left side of the plot, you see a  
11 number of precincts, blue dots, that are concentrated in  
12 the upper left-hand corner around the number 90 showing  
13 that these precincts that have zero to 15 or even up to  
14 zero to 20 percent White, meaning 80 to 100 percent  
15 minority, they are all concentrated in a very high 80 to  
16 100 percent vote for Mr. Biden in the presidential  
17 election.

02:12:50

18        As you move to the right on your screen, almost in a  
19 linear stair-step pattern, as the precinct becomes  
20 25 percent White, you see an erosion in the support for  
21 Mr. Biden.

02:13:08

22        As you get to the 50/50 mark, right in the middle of  
23 the screen where it's 50 percent minority and 50 percent  
24 Anglo in the precinct, you see that those precincts fall  
25 right around the 50/50 distribution on the Trump/Biden

02:13:29

1 vote.

2 And then again, as you continue moving to the right  
3 side of the screen, and now you get into precincts that  
4 are majority Anglo --

02:13:43

5 JUDGE GUADERRAMA: Mr. Dunn, if I could just  
6 interrupt you for a second. I'm going to get the  
7 plaintiffs' exhibits to our law clerk so they can follow  
8 along. I don't believe they have a monitor that they can  
9 follow.

02:13:59

10 MR. DUNN: We have another set of binders, Your  
11 Honor. Would that be of assistance?

12 JUDGE SMITH: Would it be possible to put it up  
13 on the monitors?

02:14:10

14 JUDGE GUADERRAMA: Do you need some additional  
15 binders?

16 Greg, can we show the exhibits on the jury box  
17 monitors?

18 CASE MANAGER: The exhibits are up there.

19 JUDGE GUADERRAMA: I'm sorry, Counselor.

02:14:29

20 MR. DUNN: Shall I proceed?

21 JUDGE GUADERRAMA: Yes, sir.

22 MR. DUNN: Thank you.

23 BY MR. DUNN:

24 **Q.** Were you finished with your answer there, Dr. Barreto?

02:14:35

25 **A.** Not quite. I believe we were looking at Figure 4.

1 Would you like me to continue?

2 **Q.** Please.

3 **A.** So in Figure 4, which plots the vote choice in the  
4 2020 presidential election, sorted by whether each  
5 precinct is Anglo or minority, as you move to the right  
6 part of the plot, you see the precincts further  
7 segregating from each other, coming all the way down as  
8 you get into the precincts that are 75, 85. Almost each  
9 five points that you move further to the right on the

10 X-axis getting more heavily Anglo, the precincts also move  
11 further down, meaning lower support for Mr. Biden.

12 So this is very close to almost what we would consider  
13 perfect racial polarization. And that's why there are two  
14 straight lines, and they cross each other almost exactly  
15 at the 50 percent point.

16 And it demonstrates that in this election, in this  
17 district there is what I would characterize as an extreme  
18 amount of racial polarization.

19 **Q.** Now, how many, roughly, jurisdictions or geographic  
20 units in the country have you analyzed for racially  
21 polarized voting?

22 **A.** Oh, as a part of consulting work, at least 50 or 60;  
23 and then in my academic work, more.

24 **Q.** How would you describe this in relation to the other  
25 places that you have analyzed?

02:16:23

1 **A.** Well, this plot here for SD-10 we are looking at is  
2 the most extreme I have ever witnessed. It's almost a  
3 perfect linear pattern, not just at the edges but across  
4 the whole plot, which is why the lines cross almost in a  
5 perfect X at the exact 50 percent Anglo and 50 percent  
6 vote choice mark.

02:16:44

7 It's suggesting that there is close to a one-to-one  
8 correlation between how many Anglos are in a precinct and  
9 how many votes Mr. Trump got and how many minorities are  
10 in a precinct and how many votes Mr. Biden got.

11 **Q.** At the bottom right of your screen you can see "N  
12 equals 309 VTDs." What does that explain?

13 **A.** That is the number of VTDs or precincts that are in  
14 this analysis across SD-10.

02:17:00

15 **Q.** Where did you gather those from?

16 **A.** This data all comes from the Texas Legislative  
17 Council, TLC.

18 **Q.** Thank you. My question is slightly different.

02:17:12

19 Where are the 309 VTDs, and what geographic unit is  
20 it? Is it in Senate District 10, the county --

21 **A.** Senate District 10 located across the entirety. This  
22 represents the precincts spread across the entirety of  
23 Senate District 10.

02:17:24

24 **Q.** And is that under the benchmark map or under the new  
25 proposal?

1 **A.** This is the new proposal.

2 **Q.** Now, moving down to Figure 5, what is depicted here?

3 **A.** The following figures, I have attempted to label them  
4 all by which district I'm analyzing; and I believe, just  
5 as a summary point, I look at the different Senate  
6 Districts 9, 10 and 22 and look at a couple of different  
7 elections; the presidential, the gubernatorial.

8 So Figure 5 now stays in Senate District 10 and now  
9 looking at the 2018 gubernatorial election and displays  
10 virtually the exact same pattern two years before where  
11 there is a linear relationship between minority or Anglo  
12 and the vote for Abbott or Valdez in that gubernatorial  
13 election.

14 **Q.** How would you describe -- how would you describe how  
15 strong racially polarized voting is in this analysis?

16 **A.** It's actually stronger than the previous chart.  
17 Mr. Abbott received an even higher share of the Anglo vote  
18 than Mr. Trump did. Mr. Valdez received an even higher  
19 share of the minority vote than Mr. Biden did.

20 So we see, especially as we look to the far left or  
21 the far right side of the image, where the homogenous  
22 precincts are, there is no question that those highest  
23 density, 75 percent and above Anglo precincts, were  
24 providing 75 percent and above support for Mr. Abbott.

25 If we look at the opposite side, those precincts that



1 are less than 20 percent Anglo, meaning they are  
2 80 percent minority, they are all concentrated in the 75  
3 to 100 percent vote for Valdez.

4 So we see the same pattern. And, in fact, it appears  
02:19:22 5 to be a little bit stronger.

6 **Q.** And again, what is the geographic unit that you pulled  
7 the VTDs from here?

8 **A.** This is the entirety of Senate District 10 under the  
9 new plan.

02:19:34 10 **Q.** Turning to Page 12, there is another one of these.  
11 What does it show?

12 **A.** This is Senate District 10, all precincts plotted  
13 against the 2016 presidential election between Mr. Trump  
14 and Mrs. Clinton.

02:19:54 15 **Q.** And do you reach the same conclusion from this as you  
16 did from the two prior figures?

17 **A.** Yes. We continue to see a direct linear pattern.  
18 There is no question that as a precinct increases in  
19 percent Anglo, the vote for the minority-preferred  
02:20:14 20 candidate Mrs. Clinton drops precipitously.

21 In the upper left corner of the plot where we have our  
22 high-density minority precincts, those are voting  
23 overwhelmingly for their candidate of choice Mrs. Clinton.

24 In the bottom right corner of the plot where we have  
02:20:33 25 precincts that are overwhelmingly Anglo, she is only

1 receiving between zero and 25 percent of the vote.

2 **Q.** And again, this analysis is taken from what geographic  
3 unit?

4 **A.** This is all precincts within State Senate District 10  
5 under the new map.

02:20:47

6 **Q.** And you transition and look at Senate District 22 as  
7 part of your analysis; is that right?

8 **A.** That's correct.

9 **Q.** Why? Why do you do that?

02:20:58

10 **A.** Well, Senate District 22 is another that I found to  
11 have cracked the minority population in Tarrant and  
12 combined it with outlying, rural, predominantly Anglo  
13 counties. And so I assessed whether or not those counties  
14 in that ultimate Senate district that was created was  
15 similar or if it had divergent patterns of voting within  
16 its communities.

02:21:22

17 **Q.** I'm showing on the screen now Figure 7, and the first  
18 thing I notice is that the lines have a curve to them.

19 **A.** That's right.

02:21:37

20 **Q.** Why is that?

21 **A.** Excuse me. That's right. As I said, our models will  
22 attempt to fit the most accurate pattern to the data. And  
23 what this shows is that while there is still a general  
24 linear pattern here, you notice a larger increase, what  
25 some might describe as an S-curve, although a slight

02:21:59

1 S-curve. Where instead of just increasing linearly, once  
2 you cross 50 percent Anglo there on the bottom -- and  
3 again, note that the lines cross exactly at 50 percent  
4 Anglo and 50 percent on the vote -- there is a larger  
5 uptick.

02:22:18

6 Now, that's explained for two reasons. The first is  
7 that there are not a huge amount of precincts in that 50  
8 to 62-1/2 percent Anglo. Okay. The Anglo precincts are  
9 actually much more concentrated in 75 percent and higher  
10 Anglo communities.

02:22:36

11 But they are a little bit higher than what the line by  
12 itself is estimating, meaning that in this case, those  
13 Anglo precincts are jumping up even higher for their  
14 support for Trump than just a general linear pattern. And  
15 so that's why there is a bit of an upslope right after you  
16 cross the 50 percent pattern -- mark.

02:22:50

17 **Q.** Is the geographic unit here Senate District 22 under  
18 the new plan?

19 **A.** That is correct.

20 **Q.** And so what conclusion can you reach from this  
21 analysis you ran?

02:23:01

22 **A.** Well, that the minority community votes cohesively for  
23 a candidate of choice. The Anglo/White community is bloc  
24 voting against at an even higher rate minority-preferred  
25 candidates.

02:23:20

1 Q. Moving on to Figure 8, it again is in Senate District  
2 22; is that right?

3 A. That's correct.

02:23:30

4 Q. And is it consistent with the results you found in the  
5 Figure 7 analysis?

6 A. Yes. It is consistent. It's also consistent with the  
7 SD-10, suggesting that Mr. Abbott outperformed Mr. Trump  
8 and received even more votes in high-density Anglo  
9 communities.

02:23:47

10 Q. And just in the interest of time, to save us some time  
11 from going through each one of these, is there anything  
12 significant about this one that you think ought to be  
13 mentioned that we didn't talk about in the earlier  
14 Figure 7?

02:23:58

15 A. No. Just an election two years before, different  
16 contest, but shows the same pattern of racial  
17 polarization.

18 Q. I'll move to Page 14, Figure 9. What is shown here?

02:24:17

19 A. This is the final plot for SD-22, Senate District 22.  
20 This is the 2016 presidential election.

21 And again, it shows a very consistent finding of the  
22 previous two, that minority voters are cohesive and they  
23 are concentrated around supporting Mrs. Clinton.

02:24:39

24 Anglo voters supported Mrs. Clinton at very low rates  
25 and were concentrated in their bloc voting against those

1 interests.

2 **Q.** All right. And then did you perform a similar  
3 analysis with regard to Senate District 9?

4 **A.** Yes, I did.

02:24:48

5 **Q.** I am taking you to Page 15 of your report, Figure 10.  
6 All right. The first thing I notice about Figure 10 is it  
7 appears that the lines are somewhat closer together on the  
8 tails.

02:25:09

9 **A.** That's correct. This is not as stark of a pattern in  
10 SD-10. As I mentioned before, the Senate District 10  
11 pattern is almost a perfect linear relationship amongst  
12 the most extreme that I have seen.

02:25:29

13 Here you still have in Senate District 9 evidence of  
14 racial polarization. There is no doubt. As you move to  
15 the left side of the screen, you do see high concentrated  
16 minority precincts clustered around the 75 percent vote  
17 for Mr. Biden.

02:25:44

18 As you move to the right side, you do see a change on  
19 the 75 percent and higher Anglo precincts there in the  
20 last part of the chart. They're voting majority support  
21 for Mr. Trump. There is no question about that. But they  
22 are not as extremely polarized as we saw in the Senate  
23 District 10 plot where those precincts were all clustered  
24 in the upper 90s in terms of their support for Mr. Trump.

02:26:03

25 **Q.** Again, for our record, the geographic unit here is

1 Senate District 9 under the S-2168?

2 **A.** That's correct. The new map.

3 **Q.** Moving to Figure 11, what is shown here?

4 **A.** Figure 11 documents the 2018 election for governor in  
5 Texas. It shows the same pattern. Similar to the other  
6 districts, a slight better performance for Mr. Abbott as  
7 compared to Mr. Trump.

8 Not quite as much polarization as in the other two  
9 districts, Senate District 10 and Senate District 22.

10 Though this would still fall safely within a conclusion of  
11 very high rates of racial polarization where highest  
12 density Anglo precincts voted very cohesively for  
13 Mr. Abbott and the highest density minority precincts you  
14 can see clustered in the top left corner of the chart  
15 voted very cohesively for Ms. Valdez.

16 **Q.** Turning to Page 16, Figure 12, what is shown there?

17 **A.** This last figure, consistent with the previous two  
18 districts, shows the 2016 presidential election just  
19 contained within Senate District 9 boundaries of the new  
20 map showing in highest density Anglo precincts Mr. Trump  
21 easily defeated Mrs. Clinton; and the opposite is true in  
22 the highest density minority portions of Senate  
23 District 9.

24 So just consistent evidence of racially polarized  
25 voting in this district.

1 Q. Now, you have referred to these as ecological  
2 regression charts. Earlier you mentioned the eiCompare  
3 package that you and Dr. Collingwood developed. Did you  
4 then turn to that software and run an additional analysis?

02:27:58

5 A. That's correct. These, as I mentioned, I always start  
6 for purposes of visualization because it allows you to  
7 actually see the data and not just see a number in an  
8 output but allows you to actually visualize where the  
9 precincts are and give you a sense of how they group

02:28:15

10 together. But the next step is to then run some specific  
11 point estimates of how people voted.

12 Q. Turning to Page 17, Table 4, is this the output result  
13 from the eiCompare?

02:28:34

14 A. Yes. This is what we would call point estimates for  
15 predicted vote choice by race in each of these different  
16 elections. This is one of the outputs that any ecological  
17 inference analysis should give you. In this case, as I  
18 mentioned, we used eiCompare.

02:28:57

19 It was showing how Anglos voted, how Latinos voted,  
20 and how Blacks voted across all of the elections that we  
21 analyzed.

22 Q. Under the new or old lines of SD-10?

23 A. This is the new map of SD-10.

24 Q. What do the results tell you?

02:29:10

25 A. Well, consistent with what we just saw, what we just

1 visualized in the scatter plots, these point estimates are  
2 quite consistent with where those tails of the lines ended  
3 up. It shows that there are extreme differences in how  
4 Anglos and minorities vote.

02:29:32 5 In every single election in SD-10, Anglo voters are  
6 giving 86 percent or higher support to Republican  
7 candidates.

8 In every single election analyzed, Black voters are  
9 giving over 90 percent support to Democratic candidates.

02:29:56 10 And Hispanic or Latino voters are voting cohesively.  
11 They are voting consistently with Blacks but a little bit  
12 lower in terms of their Democratic support, yet still very  
13 high, ranging from 73 to 82 percent support for the  
14 Democratic candidate.

02:30:18 15 **Q.** On Page 18 on Table 5 what is shown?

16 **A.** This would be the ecological inference point estimates  
17 of candidate support. This time, constrained to Senate  
18 District 22 under the new map, it documents, just like in  
19 the previous table, how different racial groups -- Anglos,  
02:30:43 20 Latinos, and Blacks -- voted in these six elections. It  
21 analyzed and it gives specific point estimates for what  
22 the model expects each group voted.

23 **Q.** Would you describe that this data shows that Black and  
24 Latinos vote cohesively?

02:31:03 25 **A.** The data is quite conclusive in that mark, showing



1 Latinos voting always over 70 percent, Blacks voting over  
2 87 percent for the Democratic candidate; and we see that  
3 pattern in every single election.

02:31:25

4 **Q.** What does it show the rough average, as best you can  
5 tell off the top of your head, for the Anglo support for  
6 Democratic candidates?

7 **A.** Anglo support for the Democratic candidates in every  
8 single one of these elections in SD-10 is below  
9 10 percent.

02:31:39

10 **Q.** Just to call your attention to this, this is the SD-22  
11 plan estimate; is that right?

12 **A.** I'm sorry. SD-22.

13 **Q.** All right. Then on Page 19, Table 6, what is shown  
14 here?

02:31:54

15 **A.** This is the last of the point estimates for Senate  
16 District 9. Similar to the other tables that we have  
17 walked through, it shows the ecological inference point  
18 estimates for Anglo, Latino and Black voting patterns.

02:32:20

19 It demonstrates the same pattern: Latino and Black  
20 voters are cohesive within themselves -- meaning, Latinos  
21 are cohesive as a group, Black voters are cohesive as a  
22 group; but they are also voting in the same direction.

02:32:43

23 In this case we document that over 74 percent of  
24 Latinos across every election vote Democrat. For  
25 African-Americans it's over 81 percent. Overall,

1 African-Americans vote Democrat in every election. And so  
2 those two groups are cohesive and voting together.

3 **Q.** I notice here in the Latino column that in the  
4 Hegar/Cornyn race the numbers are flipped.

02:33:01

5 **A.** That's right. That's just a typographical error. We  
6 saw from the actual precinct data it was the opposite. I  
7 have just caught that for the first time myself.

8 **Q.** Now, on Page 20, Table 7, what is shown?

02:33:29

9 **A.** Here we did what we refer to as a performance  
10 analysis. We wanted to understand how the new Senate  
11 districts would vote for these elections that we just  
12 analyzed using the new plans and the new boundaries. We  
13 have grouped all of the VTDs, or voting precincts, into  
14 their representative districts under the new map and  
15 re-tabulated the elections to determine what the outcome  
16 would be.

02:33:52

17 **Q.** Why did you do this?

02:34:08

18 **A.** Well, we had previously demonstrated that under the  
19 existing Senate District 10 it had voted for minority  
20 candidates of choice in all ten elections in 2020 and in  
21 an additional ten elections in 2018. Plus, it had already  
22 elected Senator Powell. So we were confident that it was  
23 a minority-performing district.

02:34:29

24 We wanted to contrast that performance with how these  
25 new district boundaries would perform if we took these

1 common statewide elections and reconstituted the  
2 precincts, added them back together, to see would these  
3 new compositions of these districts perform for minority  
4 interests.

02:34:49

5 **Q.** What is your opinion as to whether in Plan S-2168  
6 Senate District 10 will perform for minority candidates of  
7 choice if it remains law?

8 **A.** Senate District 10 will absolutely not perform for  
9 minority interests as drawn.

02:35:04

10 **Q.** Turning to Page 21, you now turn your attention to  
11 Tarrant County as a whole; is that right?

12 **A.** Yes. That's exactly correct.

13 **Q.** What is shown here?

02:35:24

14 **A.** Because Tarrant County had been cracked into so many  
15 different districts, I wanted to get a sense of: What  
16 were minority voters in Tarrant County like? Were there,  
17 in fact, multiple different sub-pockets of different  
18 minority communities that should be split apart; or were  
19 minority voters in Tarrant County as a whole cohesive?

02:35:42

20 And so this table reports ecological inference point  
21 estimates, regardless of which Senate district you are in,  
22 for all minorities and then as compared to Anglo voters  
23 within Tarrant County.

24 **Q.** What do you conclude from this?

02:36:01

25 **A.** Here we find that regardless of which Senate district

1 you are in, minority voters in Tarrant County are  
2 cohesive.

3 Latino voters are giving 79 percent or higher support  
4 to their candidates of choice.

02:36:18

5 African-American voters are giving 88 percent or  
6 higher support to their candidates of choice.

7 And in this case, they are the same candidates. They  
8 are the six Democrats we identified in these elections.

9 **Q.** And how is the Anglo community voting?

02:36:35

10 **A.** Well, across Tarrant County as a whole, Anglo voters  
11 are voting against minority interests. As I note in the  
12 report and we have seen in the visualization of the data,  
13 there are some pockets in Tarrant County where Anglo  
14 voters do have somewhat higher support, crossover support  
15 for Democrats; but in the county as a whole, Anglos are  
16 voting majority Republican against minority interests.

02:37:00

17 **Q.** Turning to Page 22, Figure 13, what is shown here?

18 **A.** This is similar visualizations we saw previously of  
19 all precincts; but instead of looking at a specific Senate  
20 district, any of the three Senate districts we have just  
21 focused on, here I'm looking at all precincts within  
22 Tarrant County, which is why the chart has a little bit  
23 more data on it. You can see there are a lot more dots  
24 because there is a lot of precincts in Tarrant County.

02:37:25

02:37:41

25 Tarrant County is a large populated county.

1 Just like in the previous charts, I have arranged  
2 these from heavily minority on the far left side to  
3 heavily Anglo on the far right side. And each of these on  
4 the Y-axis going up and down depicts what percentage of  
02:38:01 5 the vote a candidate got. This first chart, similar to  
6 the others, is the 2020 presidential.

7 **Q.** And is the Figure 14 consistent with what you have  
8 shown in the previous regression?

9 **A.** Yes. Figure 14 shows the 2018 gubernatorial. It  
02:38:21 10 shows a similar pattern. Minorities in Tarrant are quite  
11 cohesive in the top left corner of your chart voting very  
12 heavily consistently for Valdez.

13 As you move to the right-hand side, Anglo voters start  
14 giving majority vote to Mr. Abbott and have the highest  
02:38:41 15 support for Mr. Abbott in the parts of Tarrant County  
16 which are over 75 percent Anglo.

17 **Q.** And turning to Page 23, Figure 15, is that another  
18 analysis that's consistent?

19 **A.** Yes. This is -- just for consistency sake, this is  
02:38:56 20 the third plot that I have shown in each of the previous  
21 analyses. This is the 2016 presidential election which  
22 shows a similar pattern. It's an extremely strong  
23 minority cohesion in the top left corner voting very  
24 heavily in support of Mrs. Clinton. As you move to the  
02:39:15 25 right side, Mr. Trump becomes the preferred candidate of

1 choice of Anglos, which is strongest in the 75 percent and  
2 higher Anglo precincts.

3 **Q.** And then at Page 24 you transition and make a  
4 different comparison. What have you done here?

02:39:34

5 **A.** Well, here I was curious as to how the voters  
6 contained wholly inside Tarrant County voted as compared  
7 to voters outside of Tarrant County in Senate District 10.  
8 Senate District 10 took on large segments of voters  
9 outside of Tarrant County. As we reviewed earlier, I

02:40:00

10 think 377,000 new voters were moved in. And so I wanted  
11 to sort of further segment that just Senate District 10  
12 into the Tarrant County portions and then the non-Tarrant  
13 County portions.

02:40:19

14 So this Figure 16 looks at the 2020 presidential  
15 election as an example just within Tarrant County first.  
16 These are just Senate District 10 precincts only within  
17 Tarrant County.

02:40:36

18 And what it shows is that the minority precincts, not  
19 surprisingly and consistent with all of our analyses, are  
20 well-concentrated in the top left corner of the chart,  
21 suggesting extremely strong performance for Mr. Biden.

02:40:57

22 As you move to the right side of this chart, you see a  
23 downward slope. However, it doesn't go all the way down  
24 to that 5, 10, 15 percent portion as we have seen in  
25 previous charts. It sort of levels out a little bit.

1 And you can actually see perhaps the worst precincts  
2 for Mr. Biden are somewhere around only winning 25 percent  
3 of the vote. But in some of those high-density Anglo  
4 precincts in SD-10, Mr. Biden was winning 40, 45 percent  
5 of the vote.

02:41:19

6 So while we still see differences, if we just  
7 constrain to the precincts inside Tarrant County, there is  
8 some evidence of White crossover voting for the  
9 minority-preferred candidate.

02:41:33

10 **Q.** Why is that important, if at all?

11 **A.** Well, for a district to perform, we often look at what  
12 range of White crossover vote there is. Once we have  
13 established that minorities are voting cohesively  
14 together, the question is: Are there enough Anglos who  
15 will also vote for the minority candidate to get them over  
16 that 50 percent mark?

02:41:53

17 And that is the case in SD-10 as it's constituted  
18 under the old map when Senator Powell was elected. And it  
19 appears that even in the new map, if we just focus on the  
20 Tarrant County portion of that map, there is minority  
21 cohesion and, yes, Anglos are voting majority Republican;  
22 but within the Tarrant County portion it's not nearly as  
23 extreme as what we saw in some of the other analyses.

02:42:13

24 They are leveling out somewhere in the 60 to 65 percent  
25 range for Mr. Trump.

02:42:34

1 Q. Turning to the next figure on Page 25, Figure 17, what  
2 is shown here?

3 A. Well, Figure 17 is the other part of Senate District  
4 10. As I mentioned, I broke them apart into the Tarrant  
5 County precincts and the non-Tarrant County precincts. So  
6 this chart is showing all of those new precincts which  
7 were moved into Senate District 10.

8 Q. Is that why we don't see any dots or lines on the  
9 left-hand side?

10 A. Well, yes. The first thing that you see, even before  
11 looking at voting patterns, is that it's remarkable that  
12 there are only three precincts in the entirety of Senate  
13 District 10 outside of Tarrant County that are not  
14 majority Anglo. You see those three dots to the left of  
15 the 50 percent mark. Only three out of 121. The plot is  
16 essentially unfinished to the left side because there are  
17 no majority-minority precincts for us to continue this  
18 analysis.

19 So this analysis fits the plot to the available data,  
20 which is that 118 of the 121 precincts are at least  
21 50 percent or higher Anglo; and you do see that  
22 concentration up in the 80, 90, 95 percent range,  
23 including some precincts that voted 97, 98 percent for  
24 Mr. Trump in this part of SD-10.

25 And so I use these to contrast and to really show the



1 stark difference in the racial demographics and voting  
2 patterns of the precincts that were added into Senate  
3 District 10 from the outlying counties.

02:44:25

4 **Q.** What do you make, if anything, from the fact that the  
5 two lines don't cross?

6 **A.** Well, there are no precincts at all here that provided  
7 majority support for Mr. Biden, number one.

02:44:44

8 Number two, there are no supermajority-minority  
9 precincts in here. We see a line that is moving up. That  
10 blue line, it's moving up; but it's truncated, to use the  
11 word that we would describe in social sciences. It just  
12 ends.

13 **Q.** So basically --

02:44:57

14 **A.** If we had -- excuse me. If we had more data, if we  
15 had precincts that were 80 percent Black, 80 percent  
16 Hispanic, we could finish this and understand that  
17 pattern. But in this portion that was added, they are so  
18 different racially from the other part of Tarrant County  
19 that this plot appears incomplete, even though this is all  
20 the data.

02:45:18

21 **Q.** Now, in all of this analysis that you performed, are  
22 you able to state an opinion of whether or not the changes  
23 made to the Senate District 10 bear more heavily on  
24 minority voters than Anglo voters?

02:45:31

25 **A.** Yes. Absolutely.

1 Q. What does that mean?

2 A. There is no doubt -- and the plot that we're looking  
3 at now I think is strong evidence of this -- that the  
4 changes made, the new voters moved in and the new VTDs  
5 moved in, weigh extremely heavily on minority voters.

6 Q. Turning to Page 26, Table 9, what is shown here?

7 A. This is a bit of a tabular summary of what we just  
8 walked through. And it differentiates precincts as a part  
9 of Senate District 10 in terms of those precincts that  
10 were moved out of Senate District 10, that first row --  
11 these are precincts that used to be in the old map, but  
12 they were moved out -- and then the precincts on the  
13 bottom, the VTDs, that were moved into Senate District 10  
14 for the first time under the new map.

15 Q. All right. Now, finally, you attach as an appendix to  
16 your report several pages of additional charts or graphs.  
17 Could you tell us what these are?

18 A. Yes. These are additional visualizations of the  
19 statistical output of the eiCompare software package that  
20 Dr. Collingwood and I wrote. In addition to giving you  
21 the tables, the point estimates that we reviewed above, in  
22 addition to allowing you to view the full range of all the  
23 precincts, we also produce charts that show the range of  
24 the estimates.

25 So in these it is demonstrating how -- let's take the

1 first chart -- Anglo voters voted. Those point estimates  
2 at the top are giving you the average estimate, but then  
3 around each estimate it is showing you a confidence  
4 interval around it from the lowest point of the estimate  
5 to the highest point of the estimate.

02:47:41

6 And it shows you that for each racial group for each  
7 election you can see, instead of just looking at a number,  
8 84 percent, you can see that for Anglo voters those  
9 estimates are what we would call quite tight. There is  
10 not a lot of range in those. It's not like we think it's  
11 between 60 and 100 and 80 is just a midpoint. It shows a  
12 very, very tight estimate, and it shows -- that gives us  
13 more confidence in the point estimate.

02:48:00

14 **Q.** All right. Now, just a little bit more about your  
15 qualifications and I'll finish and hand you off for  
16 examination by the State.

02:48:19

17 You and I work together at UCLA; is that true?

18 **A.** That's correct.

19 **Q.** How so?

20 **A.** About four years ago -- I don't know the exact date --  
21 I invited you to give some lectures on the topic of voting  
22 rights, primarily to graduate students and law students, a  
23 topic that is within your expertise.

02:48:27

24 And as a result of that, I introduced you to the  
25 provost of the university who then invited you to continue

02:48:52

1 a year-long program lecturing to graduate students and law  
2 students about voting rights. And that turned into the  
3 Voting Rights Project at UCLA.

4 **Q.** And what is that?

02:49:10

5 **A.** That is a project that includes year-long coursework  
6 that is available primarily to graduate students and law  
7 students as well as some exceptional undergraduates who  
8 participate in a year-long's reading, social science, case  
9 law, and doing research and writing to understand how the  
10 Voting Rights Act is applied historically and today.

02:49:34

11 It also includes what has been referred to as a clinic  
12 portion, which outside of the class students do research  
13 projects and learn about the different portions of the  
14 Voting Rights Act.

02:49:53

15 **Q.** Is it fair to describe your portion of the Voting  
16 Rights Project as the social science division?

17 **A.** That's the exact portion that I oversee and the only  
18 portion.

02:50:08

19 **Q.** Do I have any role in that in terms of supervising you  
20 or your graduate assistants or your analysis or anything  
21 of that sort?

22 **A.** No. The inception of the project was that to  
23 understand how a voting rights case moves forward, there  
24 are two distinct parts. There are legal arguments and  
25 legal theories that lawyers and courts make, and there are

02:50:22

1 now today lots of social science analyses and reports that  
2 are included.

3 And so the portion that I oversee is directly with the  
4 social science analysis of students, and you stick to  
02:50:41 5 working with law students and talking about legal  
6 theories.

7 **Q.** And other than this examination that I have undertaken  
8 today, have I participated with you at all in your  
9 preparation of your report, your analysis?

02:50:53 10 **A.** No. Not at all. I've worked entirely with Mr. Gaber.

11 MR. DUNN: We pass the witness.

12 JUDGE GUADERRAMA: Thank you.

13 Mr. Hilton.

14 MR. HILTON: Good afternoon, Your Honors.

02:51:08 15 **CROSS-EXAMINATION**

16 BY MR. HILTON:

17 **Q.** Chris Hilton for the State. Good afternoon,  
18 Dr. Barreto.

19 **A.** Good afternoon.

02:52:01 20 **Q.** We have never met before; is that correct?

21 **A.** That's correct.

22 **Q.** I have some questions for you to make sure that I  
23 understand your testimony. You were retained by the  
24 Brooks plaintiffs, specifically Mr. Dunn and Mr. Gaber, to  
02:52:19 25 analyze SD-10 and the demographic and voting patterns of

1 Tarrant County, correct?

2 **A.** Among other things, yes.

3 **Q.** Among other things. What other things?

4 **A.** Looking at the map boundaries, providing opinions on  
02:52:39 5 cracking and packing and other districting criteria.

6 **Q.** All your opinions are contained in your report that's  
7 before the Court, correct?

8 **A.** All my opinions are contained in my report; and as I  
9 usually put in every report, I think it's common for every  
02:52:55 10 social scientist that you reserve the right to expand on  
11 those with the opposing expert or if new data comes to  
12 light.

13 **Q.** But for today's purposes, your opinions are contained  
14 in your report? You have not supplemented your report  
02:53:09 15 that's Plaintiffs' Exhibit Number 44?

16 **A.** I believe I wrote a rebuttal report.

17 **Q.** Okay. We're not in the rebuttal case yet. So just  
18 talking about your opinions, those are contained in PX-44?

19 **A.** Correct.

02:53:21 20 **Q.** You didn't conduct any analysis of any primary  
21 elections, correct, a primary contest?

22 **A.** Here we are only talking about the initial report?

23 **Q.** Yes, sir.

24 **A.** I just want to make sure because I did other things,  
02:53:40 25 and I don't want to answer untruthfully.

1 Q. Understood. That's an important point. And I'll just  
2 add that any work you have done with Mr. Dunn and  
3 Mr. Gaber, that's not part of your testimony to the Court  
4 in consulting or other capacity. That's not what I'm  
02:53:53 5 asking about today. I'm asking about your direct  
6 testimony and your opinions as contained in Plaintiffs'  
7 Exhibit Number 44. Is that clear enough?

8 A. Okay. And Plaintiffs' Exhibit Number 44 is my first  
9 report, not my rebuttal; is that right?

02:54:03 10 Q. Yes, sir.

11 A. Okay. We are clear.

12 Q. Okay.

13 A. So, no, I did not analyze primaries in the initial  
14 report.

02:54:11 15 Q. And you are not offering any testimony or opinions  
16 regarding the legislature's intent; you are just looking  
17 at the facts and the voting data. Correct?

18 A. That's correct.

19 Q. And no such opinions are included in your report  
02:54:25 20 that's Plaintiffs' Exhibit Number 44?

21 A. I don't believe so. I would have to go through every  
22 line.

23 Q. And you are not an attorney?

24 A. That's right.

02:54:36 25 Q. And so you wouldn't be qualified to offer any legal

1 opinion on whether or to what extent coalition or  
2 crossover districts are protected by the Voting Rights Act  
3 or any other law?

4 **A.** I'm not offering any legal conclusions at all.

02:54:49

5 **Q.** You wouldn't be qualified to do so either?

6 **A.** I don't know. That is for someone else to decide.  
7 I'm not attempting to.

8 **Q.** Fair enough. And you have given testimony in  
9 redistricting cases before?

02:55:02

10 **A.** Yes.

11 **Q.** Many times?

12 **A.** A lot of times.

13 **Q.** How many times have you testified in a redistricting  
14 case specifically?

02:55:11

15 **A.** Redistricting case? Maybe 15-ish.

16 **Q.** And you have been retained by Mr. Dunn before?

17 **A.** I have.

18 **Q.** You have worked closely with Mr. Dunn for many years  
19 in many capacities?

02:55:32

20 **A.** I have worked with Mr. Dunn. I believe we worked on a  
21 case over ten years ago. It was probably the first time  
22 we worked on a case.

23 **Q.** And you have co-authored articles with Mr. Dunn?

24 **A.** Yes.

02:55:49

25 **Q.** You are jointly running a program at UCLA with



1 Mr. Dunn?

2 **A.** That's correct.

3 **Q.** And he has retained you many times to be an expert  
4 witness?

02:55:56

5 **A.** I don't know if he has retained me since we started  
6 the program. That sort of is what led to me inviting him  
7 to UCLA, is that he had retained me many times before that  
8 and I thought his expertise would be of relevance to our  
9 students.

02:56:14

10 **Q.** And he has retained you for this hearing today?

11 **A.** I don't know exactly whom my engagement letter is  
12 with. Almost all of -- until the exchange you just saw,  
13 almost all of my conversation has been with Mr. Gaber.

02:56:36

14 **Q.** And you worked as a -- let me ask you this: You  
15 previously worked as a private consultant for political  
16 actors such as candidates and officeholders and parties?

17 **A.** I still do.

02:56:51

18 **Q.** You still do. That was my second question. And you  
19 have taken grant money from groups like the ACLU, the  
20 Brennan Center and La Raza?

21 **A.** Yes.

22 **Q.** The Texas Legislature is predominantly Republican,  
23 correct?

24 **A.** Republican?

02:57:00

25 **Q.** Uh-huh.

1 **A.** It's majority Republican now, I believe, yes.

2 **Q.** And so in this case you are testifying against what a  
3 Republican legislature did?

4 **A.** I am testifying to the effects of Plan 2168. That's  
5 all I was asked to do.

02:57:22

6 **Q.** Have you testified in other cases on the side of  
7 litigants who brought claims against the State of Texas?

8 **A.** Against the State of Texas? Yes.

9 **Q.** Or any other state officials.

02:57:39

10 **A.** I believe so, yes.

11 **Q.** Have you ever lived in Texas?

12 **A.** No. Not as a permanent address.

13 **Q.** I don't understand. Temporarily you have lived in  
14 Texas?

02:57:55

15 **A.** My father lived in San Antonio for 15 years, and  
16 sometimes I would be there for the summer.

17 **Q.** Fair enough. You have never -- have you ever voted in  
18 Texas?

19 **A.** No.

02:58:05

20 **Q.** Have you ever lived in Texas as an adult and  
21 experienced a Texas campaign or political cycle?

22 **A.** I have been involved in -- as a consultant in Texas  
23 politics, yes.

24 **Q.** But not as a voter?

02:58:24

25 **A.** I have not voted in the state of Texas ever.

1 Q. And not as a resident of Texas?

2 A. Correct.

3 Q. Have you ever been retained by a Republican potential  
4 candidate or officeholder or party?

02:58:42

5 A. Yes.

6 Q. How many times?

7 A. Maybe three.

8 Q. And how many times have you been retained by a  
9 Democratic candidate or officeholder or party?

02:58:53

10 A. More than 10.

11 Q. Does that include your expert consulting work, your  
12 legal expert work?

13 A. Yes. I have done -- most of my legal expert work is  
14 for individual plaintiffs or sometimes groups like the  
15 ACLU or the Mexican-American Legal Defense Fund, but I  
16 have also been retained before by a state party.

02:59:20

17 Q. Are you affiliated -- I think you mentioned your  
18 parents had been affiliated with LULAC?

19 A. Yes. In Kansas.

02:59:39

20 Q. Are you affiliated with LULAC?

21 A. I'm not currently a member, I don't believe.

22 Q. Have you ever been a member of LULAC?

23 A. Possibly in college.

24 Q. Okay. And a couple of other just kind of

02:59:52

25 miscellaneous preliminary topics, other than your

1 background, before we get into SD-10.

2 You mentioned Mr. Collingwood several times. Do I  
3 have that name correct?

4 **A.** Yes.

03:00:03

5 **Q.** You developed the eiCompare software with him?

6 **A.** Correct.

7 **Q.** Where does he work? What is his day job?

8 **A.** He is a professor at the University of New Mexico.

9 **Q.** Do you still work with him?

03:00:18

10 **A.** I have some projects with him, yes.

11 **Q.** What is your opinion of his work? Is it high-quality  
12 work?

13 **A.** Generally, yes.

14 **Q.** Not to detract in any way from your academic

03:00:38

15 contributions, but you'd agree that ecological inference  
16 is a commonly-used and well-understood method by many  
17 people?

18 **A.** Which people?

19 **Q.** You tell me. Other academics?

03:00:49

20 **A.** Yes.

21 **Q.** So it's more than just you out there who is capable of  
22 running an ecological inference analysis?

23 **A.** Certainly.

24 **Q.** You also understand that this Court sits in the

03:01:05

25 Federal Fifth Circuit Court of Appeals, within that

1 Court's jurisdiction?

2 **A.** Correct.

3 **Q.** And so the legal standards here may be different than  
4 they are in California? Do you understand that?

03:01:16

5 **A.** Correct.

6 **Q.** Early in your testimony you talked about Senate  
7 districts fitting together like puzzle pieces. I think  
8 that was the phrase that you used.

9 **A.** I remember that.

03:01:30

10 **Q.** And you talked about what you would expect based on  
11 the proportion of growth that was from minority groups,  
12 and you talked about general demographic trends across the  
13 state. Do you remember that testimony?

14 **A.** Yes.

03:01:41

15 **Q.** You would agree that growth was not even across the  
16 state?

17 **A.** That's true.

18 **Q.** Some areas experienced higher rates of growth?

19 **A.** Total population and racial and ethnic growth are

03:01:56

20 different. So some places, like SD-10, didn't experience  
21 a huge amount of overall population growth to put them out  
22 of deviation; but the growth that did occur was primarily  
23 minority.

24 So when we talk about growth, we want to talk about

03:02:18

25 the total number of people added; but then separately we

1 might think about the racial and ethnic composition.

2 **Q.** And so my question was: There are areas of the state  
3 that have experienced higher growth than other areas of  
4 the state in terms of total population? The answer to  
5 that is yes, correct?

03:02:35

6 **A.** Yes.

7 **Q.** And there are areas of the state that may have seen  
8 decreases in total population?

9 **A.** Potentially, yes.

03:02:42

10 **Q.** And the same is true if you look just specifically at  
11 an ethnic or racial group? There are areas where growth  
12 may have been higher; there are areas where growth may  
13 have been lower among those groups. Correct?

14 **A.** Yes.

03:02:56

15 **Q.** So the growth among any group is not necessarily  
16 homogenously spread throughout the state, correct?

17 **A.** Not necessarily. In the case of Texas, there were  
18 lots of pockets where the minority growth was quite robust  
19 and lots of pockets where the Anglo growth was either  
20 stable or declined.

03:03:19

21 MR. HILTON: Brian, can you pull up Defendants'  
22 Exhibit Number 24.

23 BY MR. HILTON:

24 **Q.** Dr. Barreto, have you seen this map before?

03:03:35

25 **A.** I might have. It looks familiar.

1 Q. So you see on the bottom left-hand corner underneath  
2 the Bexar County map there is some text that indicates  
3 this is from the Texas Legislative Council.

4 MR. HILTON: Can you zoom in on that, please,  
5 Brian.

6 BY MR. HILTON:

7 Q. Do you see that?

8 A. Yes, I do.

9 Q. You testified earlier their data is reliable and used  
10 by both practitioners and academics?

11 A. Yes.

12 Q. You yourself relied on TLC data?

13 A. Yes.

14 Q. So you don't have any concerns about this being an  
15 accurate depiction of the data if it came from TLC?

16 A. Well, I haven't analyzed this graph yet, this map.  
17 What I can say is that the data are quite accurate. I  
18 don't know who made this map. I'm not saying it's not  
19 accurate; but before I would say that this was accurate, I  
20 would want to study it and look at it.

21 Q. Well, that's fair. Let's look at it. You mentioned  
22 that Senate districts have to fit together like puzzle  
23 pieces. So let's look at some areas like the Panhandle.

24 MR. HILTON: Can you zoom in on that.

25 BY MR. HILTON:

1 Q. Do you know what I'm referring to when I say "the  
2 Panhandle," Dr. Barreto?

3 A. Yes.

03:04:58

4 Q. So a district like SD-31, Defendants' Exhibit Number  
5 24 indicates that it lost or, rather, it's populated 7-1/2  
6 percent below the ideal district population. Do you see  
7 that?

8 A. Yes, I do.

03:05:13

9 Q. And neighboring SD-28 is actually 15.3 percent  
10 relative to the ideal district population. It's below.

11 A. I see that.

12 Q. So these districts, in order to come closer to the  
13 ideal Senate district population, they have to get more  
14 people in them, correct?

03:05:27

15 A. That's right.

16 Q. And so when we look at SD-31, you can't pick up  
17 population west from New Mexico, right?

18 A. I hope not.

03:05:43

19 Q. Me, too. You can't pick up population north or east  
20 from Oklahoma?

21 A. No.

22 Q. So it's got to obtain population to bring that  
23 population deviation in line from somewhere else within  
24 Texas, correct?

03:05:54

25 A. That's correct.



1 Q. And so as that district grows, it has to grow  
2 somewhere into Texas. Well, it looks like it borders  
3 Senate District 31, which is itself -- or Senate District  
4 28, excuse me, which itself is also underpopulated, right?

03:06:12

5 A. That's correct.

6 Q. So in order to get SD-31 to where it needs to be, it's  
7 going to make SD-28's problem worse, as a general matter?  
8 You would agree?

9 A. Probably. It depends on how they drew it.

03:06:29

10 Q. It does. Is this what you are talking about when you  
11 say the map has to fit together like puzzle pieces? They  
12 can't overlap? They have to fit within the state of  
13 Texas?

14 A. Correct.

03:06:48

15 MR. HILTON: Would you zoom in on DFW.

16 BY MR. HILTON:

17 Q. This is that same exhibit zoomed in to the DFW area,  
18 correct?

19 A. That looks right.

03:07:01

20 Q. And it shows some districts that are more or less  
21 close to standard district -- to the standard -- to the  
22 ideal district size. Excuse me. It shows some districts  
23 to the north that have surplus population and a couple  
24 that are slightly under, including SD-23; is that fair?

03:07:21

25 A. I see that.

1 Q. And SD-23 is one of the ones that you also looked at,  
2 correct? Or was that SD-22? I apologize. I apologize.

3 A. I did have one map that showed a portion of SD-23 came  
4 into Tarrant County; but in terms of my analysis, I looked  
5 at SD-22.

03:07:37

6 Q. Thank you for that. So looking at this area, SD-12 is  
7 overpopulated relative to the ideal district size; so  
8 those people are going to have to go into another  
9 district. Correct?

03:07:53

10 A. Correct.

11 Q. And if you put them in a district that is to the north  
12 of SD-12, well, that's going to make SD-30 or if you go to  
13 the east, that's going to make SD-8's overpopulation  
14 problem even worse because those districts are also  
15 overpopulated. Would you agree with that?

03:08:11

16 A. Well, I agree that they are going to have to move to  
17 balance out the underpopulated districts with the  
18 overpopulated districts. Oftentimes what happens is that  
19 you do unpack them into the direct adjacent district and  
20 unpack that direct adjacent district into the one next to  
21 it and so on.

03:08:27

22 Q. So again, like puzzle pieces, they all have to fit  
23 together; and a change in one district can have  
24 consequences for neighboring districts and districts that  
25 neighbor that and districts that neighbor that, correct?

03:08:41

1 **A.** When they are very high over- or underpopulated, I  
2 would agree with that. When the districts are within  
3 closer to deviation, usually changes do not have a lot of  
4 spillover effects.

03:09:00

5 **Q.** Well, let's talk about that. Let's say that you  
6 decide to keep one of the puzzle pieces the same. You  
7 don't change that puzzle piece. That limits what you can  
8 do with the adjacent puzzle pieces, correct?

9 **A.** Not necessarily.

03:09:15

10 **Q.** I don't understand that. If your testimony is that  
11 you are going to change -- you are going to decide you are  
12 not going to change the lines of one of these districts,  
13 that you still have just as many options for all the  
14 neighboring districts?

03:09:30

15 **A.** I would say that you have lots of options in a state  
16 as big as Texas for almost all the districts, and that the  
17 most typical plan would be to start with the districts  
18 that are considerably out of deviation and try to fix  
19 those first. And then you might need to, at the end, come

03:09:54

20 into some other districts. But it doesn't really limit  
21 your options in a state as big as Texas if you freeze one  
22 district.

23 **Q.** With respect, Dr. Barreto, that was not my question.

24 My question is: If we're looking in isolation at one

03:10:07

25 district and we say, okay, we're going to keep that

1 district the same, that limits what you can do with the  
2 adjacent districts, correct? Just it must. It must limit  
3 it, correct?

03:10:23

4 **A.** Well, I think the tension is over the word "limit" in  
5 that it sounds as though suddenly your hands are tied.  
6 That's not the case at all.

7 I will agree that if you freeze one district, you  
8 cannot go into that district for population reasons.

03:10:37

9 **Q.** Thank you. That is my exact question. If you freeze  
10 one district, you can't go into an adjacent district for  
11 population reasons, right?

12 **A.** You can't go into that district you froze.

03:10:48

13 **Q.** You can't -- you can't take the population from the  
14 frozen district and put it somewhere else, and you can't  
15 take the population from somewhere else and put it in the  
16 frozen district?

17 **A.** If you freeze it.

03:11:02

18 **Q.** All right. I believe you testified earlier -- I  
19 believe you testified to this earlier that you had looked  
20 at some kind of mapping software, and I think that  
21 testimony was in connection with Paragraph 6 of your  
22 report. Do you recall that?

23 **A.** I recall that.

03:11:15

24 MR. HILTON: Could you pull up Paragraph 6 to the  
25 report, please, Brian, Plaintiffs' Exhibit Number 44.

1 BY MR. HILTON:

2 **Q.** You don't mention any type of mapping software in this  
3 paragraph, do you?

4 **A.** I do not.

03:11:23

5 **Q.** You don't mention mapping software at all in this  
6 paragraph, do you?

7 **A.** Is that a different question than what you just asked  
8 me? I'm sorry.

03:11:37

9 **Q.** You don't -- even if you don't use the words "mapping  
10 software," you don't describe mapping software? You don't  
11 describe --

12 **A.** I don't mention mapping software in Paragraph 6.

13 **Q.** You don't describe any attempts to draw any different  
14 districts in this paragraph?

03:11:48

15 **A.** I think that's what the last sentence says.

16 **Q.** You say it is possible to draw. You do not say, "I  
17 attempted to draw." Would you agree with me?

18 **A.** Not really.

03:12:08

19 **Q.** You state in here that you attempted to draw a  
20 district in Paragraph 6?

21 **A.** As I explained before, this was a cursory review; and  
22 I did look at district configurations. I looked at where  
23 populations were. I looked at the sizes, knowing that a  
24 district was about 940,000 people.

03:12:27

25 And I do this on every single time I do a statewide

1 analysis is I look at: What is the population growth?

2 Would it be possible to draw additional districts?

3 And so I did that. I agree that I didn't use the  
4 phrase "mapping software," but that was my intention of  
5 this paragraph --

03:12:47

6 **Q.** Okay.

7 **A.** -- to explain the process by which I sort of give,  
8 admittedly, a rough evaluation of what this new minority  
9 population brought to Texas.

03:12:59

10 **Q.** And what you just said was roughly consistent with  
11 your testimony earlier; but again, with respect, sir, that  
12 wasn't my question.

13 My question was: In Paragraph 6 do you describe in  
14 any sort of detail, like you just did, the efforts that  
15 you undertook?

03:13:11

16 **A.** Paragraph 6 is just what it says. I agree with you  
17 that it doesn't have the word "mapping software" or  
18 anything else.

19 **Q.** And again, that's not my question, sir. My question  
20 is: Do you describe in detail, like you have done in this  
21 court today, anywhere in your report the efforts that you  
22 say you undertook?

03:13:23

23 **A.** No.

24 **Q.** Okay. And you don't attach to your report any  
25 districts that you may have drawn?

03:13:36

1 **A.** None.

2 **Q.** And you don't mention -- you didn't mention earlier at  
3 any point in your qualifications that you ever served as a  
4 map drawer?

03:13:47

5 **A.** I have.

6 **Q.** Did you mention that earlier when you were discussing  
7 it with Mr. Dunn?

8 **A.** I don't think he asked me about that, but I have drawn  
9 maps before.

03:13:56

10 **Q.** You haven't done that today for this proceeding?

11 **A.** I was not asked to draw maps today, and I did not  
12 attach any maps.

13 **Q.** You are not advocating for any particular alternative  
14 map anywhere in your report?

03:14:09

15 **A.** No.

16 **Q.** And you are not offering that kind of opinion at all  
17 today?

18 **A.** I am not -- well, I am advocating for the -- to the  
19 extent that I'm advocating, I'm analyzing the existing

03:14:23

20 boundaries of SD-10 and I am concluding that the existing  
21 boundaries of SD-10 performed for minority interests and  
22 that the new boundaries of SD-10 do not.

23 **Q.** That's a great segue, Dr. Barreto. Let's talk about  
24 SD-10.

03:14:39

25 **A.** All right.

03:14:51

1 Q. Let's talk about its performance under the old  
2 configuration and under the new configuration. I'll try  
3 to be clear about which one I'm talking about. As we go  
4 through, if at any point you are confused about which map  
5 I'm talking about, please let me know.

6 A. Okay. Sounds good.

7 Q. Before we dive into Senate District 10, though, I just  
8 want to make sure I get some terms correct.

03:15:04

9 You have -- you have used both the terms "crossover  
10 district" and "coalition" in your report. Do you recall  
11 that?

12 A. I think you are right, but I would have to look at  
13 specific paragraphs to be clear.

03:15:19

14 Q. And you certainly have talked about crossover  
15 districts and SD-10 being a crossover district today?

16 A. Correct.

17 Q. All right. And those are -- but those are two  
18 distinct concepts, correct?

19 A. In -- are you asking legally or in what way?

03:15:34

20 Q. Are they distinct to you?

21 A. I think they are often related.

22 Q. Are there any distinctions between the idea of a  
23 crossover district and a coalition district?

24 A. Yes.

03:15:45

25 Q. What are some of those differences?



1 **A.** When we speak of crossover districts, we're often  
2 speaking of districts in which there is some amount of  
3 nonminority, usually Anglo, population that evidences  
4 enough crossover vote in support of minority candidates.

03:16:07

5 When we're speaking of coalition districts, we're  
6 often speaking of minorities, typically in Texas, Black  
7 and Hispanic, and now with the growing Asian population,  
8 that vote in coalition together to elect a candidate of  
9 choice.

03:16:28

10 Sometimes in coalition districts there are also a  
11 presence of some White crossover voters. That's why I'm  
12 saying you can't just perfectly disentangle them and  
13 separate them. There is some overlap.

14 **Q.** Which one is SD-10?

03:16:43

15 **A.** Are you asking me for a legal conclusion or what?  
16 Because I thought we established that I'm completely  
17 unclear on your question.

18 **Q.** I appreciate the opportunity to clarify. I am not  
19 asking you at any point during this for a legal opinion.

03:16:58

20 That's absolutely the province of the Court.

21 **A.** Okay.

22 **Q.** So my question is: As you understand the terms -- I  
23 mean, you've used the term "crossover" repeatedly in your  
24 report. You have used it in your testimony today. You've  
25 used the term "coalition" in your report, and you have

03:17:09

1 just defined what a coalition district is.

2 So I'm asking you: Which one of those is SD-10, in  
3 your opinion?

03:17:26

4 **A.** In my opinion, SD-10 at the start of the decade was a  
5 crossover district that a certain amount of Anglo  
6 crossover vote, combined with strong minority cohesion,  
7 allowed it to elect minority candidates of choice.

8 As I state in my report and I stated earlier, SD-10 is  
9 almost certainly today a majority-minority CVAP district.

03:17:53

10 **Q.** And we'll talk about that, but I want to make sure I  
11 understand what you just said. You just said it was a  
12 crossover -- in your view in the past, it was a crossover  
13 district where Whites crossed over to vote with a minority  
14 coalition? Is that what you said?

03:18:12

15 **A.** I think that's what I said.

16 **Q.** Okay. So I suppose your answer to my question of  
17 "Which one is SD-10?", in your opinion, it's both? It's a  
18 crossover and a coalition district?

03:18:27

19 **A.** I think it could be considered what started as a  
20 crossover district is now a majority-minority CVAP  
21 district where under the benchmark plan or the existing  
22 plan still does contain some, as I showed in one of my  
23 charts, some White crossover voters. So it's possible  
24 that if you have a coalition district, there are still

03:18:48

25 some White crossover voters in there who are contributing

1 to those margins.

2 **Q.** Putting aside your contentions about the current state  
3 of CVAP and SD-10, I'm trying to understand what you are  
4 describing as the historical SD-10. And I understand your  
03:19:08 5 testimony to be that it's both a crossover and a minority  
6 coalition district where White voters are crossing over  
7 and combining with a coalition of minority voters. Is  
8 that correct? Do I understand your testimony correctly?

9 **A.** I'm not taking a position on, like, what proper noun  
03:19:27 10 to call SD-10. I am describing the voting patterns that  
11 are in there and how it came to be a performing district  
12 for minority interests.

13 And I think it is safe to say that in those elections  
14 I analyzed there was strong minority cohesion. They voted  
03:19:44 15 for candidates of choice at high rates. And there was  
16 enough crossover voting from Anglos to consistently put  
17 those minority candidates of choice in the winning margin.

18 **Q.** So I do understand your testimony correctly?

19 **A.** I don't know.

03:20:01 20 **Q.** Well, I'm trying to use your terms, and I'm trying to  
21 make sure I am repeating it back to you as it sounds to  
22 me. So --

23 **A.** I think we just said the same thing. So --

24 **Q.** Well, if you think so, I think so. I just want to  
03:20:15 25 make sure you and I are on the same page, Dr. Barreto.

1 **A.** Okay. Gotcha.

2 **Q.** All right. You talked about minorities in your report  
3 and in your testimony today; and you used the term  
4 "minorities" to mean everyone who isn't White, correct?

03:20:30

5 **A.** Generally, yes.

6 **Q.** And you base that off of the voting behavior that's  
7 demonstrated in the 2018 and 2020 general elections that  
8 you describe in, I believe, Section II of your report,  
9 correct?

03:20:44

10 **A.** I think we also have the 2016 presidential in most of  
11 the analysis, but yes.

12 **Q.** I understood that your analysis with respect to the  
13 2016 presidential contest was about the newly enacted  
14 version of SD-10, not the benchmark version of SD-10. Did  
15 I misunderstand that?

03:21:03

16 **A.** I would have to go back and look at -- you are talking  
17 about the performance analysis of the existing or  
18 benchmark SD-10?

19 **Q.** That's correct. I am talking about when you say that  
20 it was a minority coalition district with crossover White  
21 voters that was performing in the past, in the benchmark  
22 version, you are basing that off of voting behavior in  
23 2018 to 2020 general elections that you describe in your  
24 report, correct?

03:21:15

03:21:31

25 **A.** That's correct.

1 **Q.** And again, I just want to make sure we're very clear  
2 on this term "minorities" because it's been an important  
3 term in your testimony and in your written submissions.

4 That includes Blacks, Hispanics, Asians, and any sort of  
5 residual other category as described in this data. And  
6 I'm using the terms as I see them in these reports. But  
7 it's Blacks, Hispanics, Asians and any other minorities?

8 **A.** I think I have been very careful to try to describe  
9 the voting population of interest as primarily Black and  
10 Hispanic, with somewhere around 7 percent or so Asian  
11 voting population as well. I would agree that those are  
12 the primary minority groups.

13 But there are other non-Anglo populations. There  
14 might be native. There are other folks who identify as  
15 mixed race or multi-racial who when we look at the  
16 Anglo/non-Anglo dichotomy would be in the non-Anglo  
17 category.

18 **Q.** Did you do any analysis specific to that grouping?

19 **A.** I can't remember if we have vote choice in the  
20 ecological inference point estimates, but they are  
21 certainly included in every single one of the scatter  
22 plots because the scatter plots range from zero percent  
23 Anglo to 100 percent Anglo. So that uses the dichotomy.

24 **Q.** Okay. So I guess what you are saying is you do it  
25 both ways at different points in your report? Sometimes

1 you'll look at a specific group and White separately, and  
2 sometimes you'll look at White and non-White?

3 **A.** Correct.

03:23:46

4 **Q.** So depending on the context, when you are talking  
5 about minorities, that word could be different? It could  
6 have different meanings?

03:24:06

7 **A.** I think I have tried to be pretty consistent  
8 throughout the report, as I said, talking about Black and  
9 Hispanic as the overwhelming makeup of that group, Asians  
10 third, and then others. As I said, I have tried to be  
11 consistent.

12 There could be, you know, one phrase that's  
13 inconsistent; and I would be happy to try and explain it.

03:24:17

14 **Q.** I appreciate that. If we come across anything, I'll  
15 ask you.

16 **A.** Thank you.

03:24:27

17 **Q.** Let's talk about population numbers, and you have  
18 touched on these a little bit with Mr. Dunn. There are  
19 many different metrics that can be used to look at a  
20 population; that's true?

21 **A.** Probably. I don't know what you mean by "metrics."

22 **Q.** Well, for example, VAP and CVAP are two distinct  
23 methods, correct?

24 **A.** Population sub-groups, yes.

03:24:44

25 **Q.** And you discuss both VAP, which is voting age

1 population, and CVAP, which is citizen voting age  
2 population? You discuss both of those in your report,  
3 correct?

03:24:59

4 **A.** Both of those. And then I'm pretty sure I also just  
5 refer to total population, which is everyone.

6 **Q.** Of course. But with VAP and CVAP specifically, those  
7 are not interchangeable, correct?

03:25:21

8 **A.** Well, they are all subset of the prior. So VAP is a  
9 part of total population. And CVAP is a subset of VAP.  
10 So CVAP includes lots of VAP because it's voting age  
11 population, but it's subset to just citizens. So they are  
12 not distinct or different, but they build on each other.

03:25:45

13 **Q.** So, again, Dr. Barreto, my question is: Those two  
14 measures of a population are a population subset. VAP and  
15 CVAP, they are not the same thing? They are different  
16 things?

03:26:05

17 **A.** No. I think what I just said is they are not really  
18 different things because VAP includes a lot of CVAP in it,  
19 but CVAP is a smaller piece of VAP. So it's not like CVAP  
20 is over here, and VAP is over here. VAP is larger. And  
21 CVAP is part of VAP, but it's just a smaller piece of it.

22 **Q.** CVAP is a subset of VAP because it only measures the  
23 citizens that are part of the voting age population?

24 **A.** That is correct.

03:26:20

25 **Q.** And voting age population is a subset of total

1 population because it's only adults, essentially?

2 **A.** Exactly.

3 **Q.** Okay. So they are not the same thing? They are  
4 different?

03:26:28

5 **A.** I don't think they are different because -- they are  
6 different measures, but I just want to be clear that they  
7 are not different populations because they are part of the  
8 larger population.

03:26:43

9 **Q.** And maybe that's where we are talking past each other.  
10 They are different measures, correct?

11 **A.** Yes.

12 **Q.** The measures themselves are not interchangeable?

13 **A.** In what way?

03:26:53

14 **Q.** I mean, they are not interchangeable for all purposes,  
15 correct?

16 **A.** Well, they are highly correlated with each other. And  
17 so depending on what data are available to an analyst,  
18 sometimes people will use VAP if CVAP is not available for  
19 what they would have done with CVAP. So they can be used  
20 for the same purpose. That's why I asked in what instance  
21 are they interchangeable or not.

03:27:13

22 **Q.** Well, let's say I wanted to measure the number of  
23 people in a certain geographic area or jurisdiction who  
24 could vote. I would want to use CVAP for that number

03:27:30

25 because only citizens can vote in Texas; isn't that



1 correct?

2 **A.** To answer that question how many people in a  
3 jurisdiction are eligible to vote, you would want to use  
4 CVAP, yes.

03:27:41

5 **Q.** I would not want to use VAP because that would give me  
6 a number that's higher than the number of eligible voters  
7 because it doesn't exclude noncitizens?

03:28:03

8 **A.** In most places where there is a large immigrant  
9 population the VAP number does include noncitizens who are  
10 not eligible to vote. So the question sort of always  
11 depends on the context of where you are trying to answer  
12 it.

03:28:19

13 There are certainly some counties and states that have  
14 almost no noncitizens, in which case VAP and CVAP are  
15 almost the exact same number.

16 So that's why when I think of those things, I think  
17 about in which context are we describing.

18 **Q.** How about in the context of Tarrant County and SD-10?

19 **A.** What is the question?

03:28:32

20 **Q.** If I wanted to know the number of people who could  
21 vote in Tarrant County or in SD-10, I would want to look  
22 at CVAP as opposed to VAP, correct?

23 **A.** Correct.

03:28:48

24 **Q.** And CVAP and VAP have different data sources. They  
25 have different uses. They have a different legal

1 significance. Is that correct?

2 **A.** That was like three questions. So let me go one by  
3 one.

03:28:57

4 Do they have different sources? No. They have the  
5 same source. They both are derived from the American  
6 Community Survey.

7 What was the next question?

03:29:20

8 **Q.** We can just move on from this. On Page 2 of your  
9 report, Plaintiffs' Exhibit 44, Paragraph 7, you note that  
10 newly enacted -- that the newly enacted Senate map has 15  
11 majority-minority VAP districts and the benchmark map has  
12 16 majority-minority voting age population districts.

13 **A.** I see that.

14 **Q.** That's correct? That's your testimony?

03:29:40

15 **A.** That was my understanding at the time that I wrote  
16 that sentence, yes.

17 **Q.** Do you have a different understanding of VAP  
18 majority-minority districts now?

19 **A.** No.

03:29:53

20 **Q.** So that is your understanding?

21 **A.** That's my understanding.

22 **Q.** And you used VAP, not CVAP, in Paragraph 7, correct?

23 **A.** Correct.

03:30:06

24 **Q.** And so when you are talking about voting age  
25 population here, that doesn't correspond to eligible

1 voters in the district because to vote in Texas you have  
2 to be a citizen, correct?

3 **A.** That's correct.

03:30:21

4 **Q.** It's true, isn't it, that there was not a decrease in  
5 the number of majority-minority districts in the Senate  
6 map if you are looking at CVAP? Is that correct?

7 **A.** I don't recall. I think it was the same number.

03:30:39

8 **Q.** It was the same number in the benchmark map and in the  
9 enacted map when you are looking at the number of  
10 majority-minority CVAP districts?

11 **A.** I think. But I didn't reference that here.

12 **Q.** So you don't know?

13 **A.** I don't know.

03:30:57

14 MR. HILTON: Okay. And, Your Honors, I  
15 apologize. I don't recall if there was an afternoon break  
16 scheduled. I'm just going to keep going until you tell me  
17 to stop. I think now is a good breaking point if you want  
18 to.

03:31:10

19 JUDGE GUADERRAMA: I was going to go another 15.

20 MR. HILTON: I'm happy to do that. Whatever is  
21 the Court's preference.

22 JUDGE GUADERRAMA: That will take us to halfway  
23 through. We will be halfway through the afternoon in  
24 15 minutes.

03:31:18

25 MR. HILTON: I'll keep going. Thank you, Your

1 Honor.

2 Brian, can you pull up Defendants' Exhibit Number 22,  
3 please.

4 BY MR. HILTON:

03:31:31

5 **Q.** Have you seen this exhibit before, Dr. Barreto?

6 **A.** I might have. I don't know if you have a hard copy of  
7 this. That would be -- that would make it a lot easier to  
8 read.

03:31:46

9 MR. HILTON: I believe that we did have  
10 Exhibit 44 up there. I don't know. Perhaps we repurposed  
11 them for your clerks, Your Honor.

12 JUDGE GUADERRAMA: What number was it?

13 MR. HILTON: Defendants' Exhibit Number 22, Your  
14 Honor.

03:32:01

15 JUDGE GUADERRAMA: Here you go.

16 THE WITNESS: Thank you, sir.

17 MR. HILTON: Thank you, Your Honor. I appreciate  
18 that.

19 **A.** Okay. I have it in front of me.

03:32:13

20 BY MR. HILTON:

21 **Q.** Have you seen this document before?

22 **A.** Give me just a quick second to glance at it.

23 **Q.** Of course. Take your time.

24 **A.** Yes. I believe I have.

03:32:34

25 **Q.** What is this document?

1 **A.** This appears to be a table created by the Texas  
2 Legislative Council of the 31 Senate districts with their  
3 2020 census population and then their citizen voting age  
4 population taken from ACS.

03:33:01

5 **Q.** And this exhibit -- this document indicates that it's  
6 a tabulation of the CVAP from the 2015 to 2019 American  
7 Community Survey; is that correct?

8 **A.** That's correct.

03:33:19

9 **Q.** And it lists the margin of error for every number on  
10 here, correct?

11 **A.** It does. It lists something. I'm not sure. Those  
12 are 90 percent confidence interval margins of error. I  
13 see it at the very, very bottom.

03:33:37

14 **Q.** Okay. So for every number for every district it lists  
15 the margins of error --

16 **A.** It does.

17 **Q.** -- at 90 percent confidence intervals?

03:33:51

18 **A.** It does. But in calculating these when bloc groups  
19 are split is a little tricky. As you see, there is a  
20 lengthy footnote at the bottom. It says the MOE, margin  
21 of error, can only be calculated when using whole bloc  
22 groups.

03:34:04

23 So some of them that were split -- anyway, we could  
24 have an hour-long discussion about that. I just want to  
25 make clear that there is a lot of science that goes into

1 calculating margins of error when you have to split bloc  
2 groups.

3 **Q.** Well, understood. And I hope it doesn't take an hour,  
4 but I feel like I have to ask now. Splitting a bloc  
03:34:18 5 group, is that the same as splitting a precinct?

6 **A.** It's a similar concept. It means that as they are  
7 drawing the maps, they might decide to split a bloc group  
8 and put part of the bloc group in one district and part in  
9 another.

03:34:35 10 The census, when they design their bloc groups, they  
11 don't care what any of our state maps are. And so they  
12 will report out CVAP data to us at the bloc group level.  
13 And then we have to go and reconstitute it back into your  
14 Senate maps.

03:34:54 15 And so where on the boundaries usually there are some  
16 splits and usually we just apportion the population to  
17 either side roughly; but depending on how many splits  
18 there are, it can complicate the margin of error estimate.

19 **Q.** And that's what this indicates? It indicates that  
03:35:10 20 because of bloc groups there is a margin of error to this  
21 confidence level and explains the scientific assumptions  
22 or whatnot?

23 **A.** Yeah. I think that's what this footnote at the bottom  
24 is getting at. I just wanted to clarify that.

03:35:23 25 **Q.** I appreciate that. So you'll agree that with respect

1 to Senate District 10 -- with respect to Senate District  
2 10, according to the 2015 to 2019 ACS survey data, 53.9  
3 percent of Senate District 10 under the benchmark map was  
4 the White citizen voting age population? Do you agree  
5 with that?

03:35:52

6 **A.** I agree that using the 2015 to 2019 five-year ACS,  
7 that's their most recent estimate.

8 **Q.** And you would agree that if you were to add the  
9 African-American, or on here they are Hispanic and Black  
10 populations, you would get to 40.9 percent if you were to  
11 add those two together?

03:36:12

12 **A.** It looks like they have also included folks who marked  
13 Black as their primary race but also marked White and then  
14 others. So you might get another half percent in those  
15 next two columns but, yes, I agree.

03:36:34

16 **Q.** 41 percent in change?

17 **A.** Correct.

18 **Q.** Well short of a majority? Eight and a half points  
19 short of a majority?

03:36:47

20 **A.** Are you just asking me to confirm that? I don't  
21 understand the question.

22 **Q.** You agree with that, right?

23 **A.** That's less than 50, yes.

24 **Q.** Okay. Even if you were to add in all the other  
25 non-White citizen voting age population people listed on

03:37:03

1 Defendants' Exhibit Number 22, you are still short of a  
2 majority?

3 **A.** It would probably be 46.1 percent as per the 2015 to  
4 2019 ACS estimate, according to this table.

03:37:22

5 **Q.** And you wrote in your report and you testified a bit  
6 about this earlier. You said in your report, quote,  
7 "Benchmark SD-10 is almost certainly a majority-minority  
8 district by CVAP today."

03:37:38

9 But you would agree that the most up-to-date official  
10 ACS figures show that it is not, correct, according to the  
11 most up-to-date official ACS figures?

03:37:54

12 **A.** Well, I think this is what they had available at the  
13 time. I dispute that it's the most up-to-date because, as  
14 I explained, this is really a reflection of the year 2017;  
15 but I don't dispute that this is what they had available  
16 to them when they made this table.

03:38:09

17 **Q.** And, in fact, as we sit here -- stand here today, it's  
18 still the most up-to-date official numbers because you  
19 testified earlier that we're still waiting on the 2020  
20 single year due to -- you explained it earlier?

21 **A.** Correct. The 2020 single year and the 16- to 25-year  
22 has not been produced by the census.

23 **Q.** So this is the most up-to-date, five-year window, ACS  
24 data available?

03:38:27

25 **A.** Correct.



1 Q. And that would be the most up-to-date data available  
2 to this Court or any other party or any other academic out  
3 there who wanted to look at this?

03:38:40

4 A. It wouldn't be the most up-to-date data. It would be  
5 the most recent ACS.

6 Q. It's the most up-to-date official ACS data that is  
7 available?

8 A. It is the most recently available American Community  
9 Survey data, yes.

03:38:53

10 Q. And as was discussed earlier, I think in the context  
11 of an objection, you haven't provided any material to the  
12 Court in your report or anywhere else to show any  
13 additional calculations or provide any additional data?

03:39:10

14 A. Well, I did calculations. That's why I wrote that  
15 sentence. I have been involved in -- I have probably been  
16 asked by 50 people to estimate CVAP because it's a very  
17 desirable question to know the answer to in rapidly  
18 changing areas.

03:39:28

19 So the reason I wrote that sentence is that there have  
20 been dramatic changes year-in/year-out in the CVAP rates.  
21 There are linear trends, and that's why I concluded that  
22 it's almost certainly today a majority-minority CVAP.

03:39:47

23 Q. But whatever calculations you did, whatever you looked  
24 at, it's not described in your report? It's not attached  
25 to the report, correct?

1 **A.** Just that sentence, you are right.

2 **Q.** That's right. And so you would agree with me, then,  
3 that whatever additional calculations you may have done  
4 and not attached to your report and not described, that's  
03:40:01 5 not part of the record before this Court today? You would  
6 agree with that?

7 **A.** I don't know exactly what gets moved into the record.  
8 I just comment on my report. That's the only sentence I  
9 have.

03:40:10 10 **Q.** Well, you don't have any knowledge of anything -- you  
11 didn't provide anything different to the legislature, did  
12 you?

13 **A.** I did not interface with the legislature at all.

14 **Q.** And you don't describe in your report any awareness of  
03:40:22 15 the legislature having any data other than what the Texas  
16 Legislative Council provided, such as in Defendants'  
17 Exhibit Number 22?

18 **A.** I don't know if the state demographer provided  
19 forecast models. That's a pretty common thing. He might  
03:40:39 20 have done that. But I was not a part of any of his  
21 briefings or any of those. So I don't know. But I am  
22 just stating I don't want to state incorrectly that they  
23 didn't receive forecasts because it's a fairly common  
24 thing that demographers would do. So they might have, but  
03:40:59 25 I don't know.

1 Q. And that was my question. You don't know?

2 A. No.

3 Q. And you don't describe in your report any other data  
4 that was provided to the Texas Legislature?

03:41:09

5 A. No.

6 Q. So let me ask you this question, and then something  
7 tells me we may have -- you may have some follow-up  
8 clarifying questions, but I'm going to do my best to make  
9 this crystal clear.

03:41:37

10 A. Okay.

11 Q. But I'm trying to be clear. I promise you.

12 Even if you are correct that minorities in Senate  
13 District 10 vote cohesively, if they have less than  
14 50 percent CVAP, they can't control the outcome of an  
15 election versus a similarly cohesive Anglo population,  
16 correct?

03:41:51

17 A. It would depend on their voter turnout rates. So if a  
18 group is, let's say, 48 percent but they vote at really  
19 high rates, they might be 54 percent on election day. So  
20 we would have to analyze, you know, each election to know  
21 what the majority of the electorate was.

03:42:13

22 Q. You didn't do a lot of voter turnout analysis that I  
23 saw in your report or writing, did you?

24 A. Well, the ecological inference models in eiCompare all  
25 account for voter turnout.

03:42:33

1 Q. You didn't separately analyze voter turnout?

2 A. No.

3 Q. And if we assume that Anglos and minorities, using  
4 your definition of any non-Anglo person, if they have  
5 similar cohesion and similar turnout, whichever group has  
6 greater than 50 percent CVAP, that's the group that's  
7 going to control the district, correct?

8 A. Generally, if they have the same mirrors of cohesion.

9 Q. Right. So that was my question. So if they have  
10 similar cohesion and similar turnout, whoever has greater  
11 than 50 percent of CVAP for Anglos versus minorities, that  
12 group is going to control the outcome in an election?

13 A. If they are voting in opposite patterns, correct.

14 Q. And just one other point, since that word "minorities"  
15 came up again.

16 In your -- all the graphs that Mr. Dunn went through  
17 with you, your -- the RPVA analysis, the plots where most  
18 of them look like an X, that -- for purposes of those  
19 figures in your report, you used the definition of  
20 minorities that is Anglos and non-Anglos? Those are the  
21 groups you are comparing?

22 A. In the scatter plot visualizations it's very difficult  
23 to show multiple racial groups on the same X-axis. So for  
24 the purposes of ease of visualization, you are right. We  
25 just show percent Anglo or not Anglo.

1 Q. So those figures in your report, by design, would not  
2 be able to tell the reader anything about differences  
3 between Black and Latino populations, for example?

4 A. No. You can --

03:44:31

5 Q. You just lumped them together?

6 A. You can. There is certainly identical visualizations;  
7 and probably in these, if we pull them back up, I could  
8 show you exactly where the Black precincts were and where  
9 the Hispanic precincts were. They are all sorted on the

03:44:50

10 percent Anglo only as the X-axis; but as you recall,  
11 Blacks were about 10 to 15 points more Democratic.

12 And so typically on that left side you do see two  
13 clumpings. You see a clumping in the higher 90 percent to  
14 100 percent, and then you see a clumping in the 75 to  
15 85 percent range.

03:45:11

16 And so as you, you know, look at these plots for a  
17 long time, it's quite easy to spot sub-groupings if the  
18 voting patterns support that.

19 JUDGE GUADERRAMA: Mr. Hilton, if we can go ahead  
20 and take our afternoon recess now. Did you have --

03:45:26

21 MR. HILTON: Can I ask one follow-up question on  
22 this point? And then, this is actually a great stopping  
23 point.

24 JUDGE GUADERRAMA: You may.

03:45:35

25 MR. HILTON: Thank you, Your Honor.

1 BY MR. HILTON:

2 **Q.** So just again on that point, I have no doubt it's easy  
3 for you to see that, understanding the data as deeply as  
4 you do; but the way the data is presented on all the  
5 figures that we were just discussing, it's the figures  
6 themselves are separated into Anglo and non-Anglo?

7 **A.** That's correct.

8 **Q.** And that's the same for the racial shading maps that  
9 are in your report as well? They are separated into Anglo  
10 and non-Anglo?

11 **A.** That's correct.

12 **Q.** And so just from the face of those figures -- I  
13 understand you could look at the underlying data and, you  
14 know, draw some other conclusions. But as far as the  
15 figures in your report, you can't look at those figures  
16 and tell anything about any differences between Black and  
17 Hispanic populations, for example?

18 **A.** I think that's where we disagree because I can look at  
19 them and determine that. I would agree on the maps  
20 because they just show red or green shading. But on the  
21 scatter plots, where there are differences between Black  
22 and Latino levels of cohesion, they do tend to clump  
23 together.

24 I agree that I have only labeled the X-axis percent  
25 Anglo.

1 Q. Thank you. And I think that last point is the  
2 question I'm asking, which is: It's not specifically  
3 described in the figure itself, those differences?

4 A. Not in the scatter plot.

03:46:57

5 Q. Thank you.

6 MR. HILTON: I think that this will be a good  
7 time for a break, Your Honor. Thank you.

8 JUDGE GUADERRAMA: Thank you, Mr. Hilton. We'll  
9 recess until 4:00.

03:47:20

10 THE MARSHAL: All rise.

11 (Recess from 3:47 p.m. to 4:00 p.m.)

12 JUDGE GUADERRAMA: Thank you. Be seated, please.  
13 All right.

14 Mr. Hilton, Dr. Barreto is still on the witness stand  
15 and still your witness.

04:00:53

16 MR. HILTON: Thank you very much.

17 BY MR. HILTON:

18 Q. Dr. Barreto, you assert in your report that Senator  
19 Powell is the minority candidate of choice in SD-10 or at  
20 least she was in 2018, correct?

04:01:15

21 A. Yes.

22 Q. How did you come to that conclusion? What data did  
23 you look at?

24 A. Election data from her election.

04:01:29

25 Q. From her election?

1 **A.** I believe so, yes.

2 **Q.** And that's the data described in that section of your  
3 report that we were talking about earlier, the 2018-2020  
4 Section II, I believe?

04:01:39

5 **A.** I believe the Powell election is described in the  
6 paragraph specifically about her election.

7 **Q.** That's right. You also conclude that SD-10 has  
8 minority candidates of choice winning 19 of 23 elections  
9 across 2018 and 2020, including winning ten out of ten in  
10 2020?

04:02:01

11 **A.** That sounds right.

12 MR. HILTON: Can you pull up Plaintiffs' Exhibit  
13 Number 44.

14 BY MR. HILTON:

04:02:09

15 **Q.** I should have done that first. That's the paragraph  
16 we were talking about. I believe it's zoomed in on your  
17 screen as well.

18 **A.** Is that in this book, as well?

19 **Q.** It should be. Yes, sir.

04:02:18

20 **A.** What number?

21 **Q.** That's going to be in the Plaintiffs' exhibit binder,  
22 Number 44.

23 **A.** That's a different book than this?

24 **Q.** Yeah. Yeah.

04:02:33

25 THE WITNESS: Is the entire report in there?



1 JUDGE SMITH: Yes. I'll give you the whole  
2 thing.

3 THE WITNESS: Thank you.

4 JUDGE SMITH: Sure.

04:02:46

5 MS. DANAHY: Your Honor, we have an extra binder  
6 for the witness.

7 THE CLERK: Judges, they have an extra binder.

8 JUDGE SMITH: This is easier for you to use.

9 THE WITNESS: I have got the report.

04:02:59

10 MR. HILTON: Thank you. And, Your Honors, I  
11 apologize. We'll have an additional copy tomorrow so you  
12 don't have to do that.

13 JUDGE SMITH: That's fine. Don't worry about it.

14 MR. HILTON: I greatly appreciate it. Thank you.

04:03:15

15 **A.** Paragraph 10.

16 BY MR. HILTON:

17 **Q.** Paragraph 10 of Exhibit 44 is where we are at right  
18 now, Dr. Barreto. That's where I was reading from before,  
19 and that's where you talked about Senator Powell, correct?

04:03:25

20 **A.** Yes.

21 **Q.** And when you are talking about the 2018-2020  
22 elections, you summarized those on the next page in  
23 Table 3 of your report, which is Page 5 of Plaintiffs'  
24 Exhibit Number 44; is that correct?

04:03:43

25 **A.** That's correct.

1 Q. These are all statewide races, correct?

2 A. I believe so, yes.

3 Q. You didn't include any local elections in this area  
4 that might have been probative of the points in your  
04:04:12 5 report? You just look at the statewide elections for  
6 these two years, correct?

7 A. I reference Senator Powell's election in Paragraph 10  
8 and describe the margin of victory and the votes.

9 And then in Table 3 I'm summarizing statewide  
04:04:29 10 elections that overlapped with SD-10.

11 Q. And so there are -- other than Senator Powell's own  
12 election, there are no other elections that you looked at,  
13 with respect to this point in your report, other than  
14 statewides, correct?

04:04:46 15 A. In this table these are the only elections that I  
16 looked at; that's correct.

17 Q. And you didn't go back looking past 2018, correct?

18 A. Not in Table 3.

19 Q. In this section of your report you don't go back past  
04:05:02 20 2018. I understand later you go back to 2016. In this  
21 section of your report, when you are talking about past  
22 performance of the benchmark, you go to 2018 and 2020,  
23 correct?

24 A. Correct.

04:05:16 25 Q. I think you testified earlier that you didn't want to

1 do that -- didn't want to go back further because you  
2 wanted to look at the current electorate. Do I recall  
3 that correctly?

4 **A.** Yes.

04:05:27

5 **Q.** So it's your choice not to go back in time further  
6 than 2018?

7 **A.** I felt that the more recent elections reflected better  
8 on the current electorate than we were trying to  
9 understand.

04:05:40

10 **Q.** And that was your decision in coming to your opinions?  
11 In other words, it wasn't like a condition of your  
12 engagement? I'm not asking about any privilege, but I  
13 just want to make sure I understand. It was your decision  
14 to do that? You weren't instructed to do that?

04:05:54

15 **A.** Correct.

16 **Q.** Okay. And when we're looking at the instances in 2018  
17 where statewide candidates who are minority-preferred were  
18 not elected, you would agree with me that you have  
19 candidates of several different races who fall into that  
20 category, correct?

04:06:14

21 For example, Ms. Valdez was Hispanic or is Hispanic;  
22 Ms. Chevalier is African-American; Mr. Suazo is Hispanic,  
23 correct?

24 **A.** I think you are correct, but I don't have that  
25 information in front of me.

04:06:33

1 Q. And Mr. McAllen was White?

2 A. And who?

3 Q. Mr. McAllen was White, lost to Mr. Craddick?

4 A. That could be right.

04:06:43 5 Q. You didn't look at the race or ethnicity of a  
6 candidate?

7 A. In this section I just looked at which candidates were  
8 preferred and whether or not they won or lost the race.

9 Q. Okay. And so you don't have any independent knowledge  
04:07:00 10 whether Ms. Chevalier, for example, is African-American?

11 A. I did not research that.

12 Q. That was a comptroller race, I believe. Is  
13 comptroller a statewide office in California like it is in  
14 Texas?

04:07:14 15 A. We have something like that, I think.

16 Q. Well, you in this section of your report didn't go  
17 back into the past farther than 2018, but I would like to  
18 do that with you now.

19 MR. HILTON: Brian, Defendants' Exhibit

04:07:37 20 Number 17, please.

21 BY MR. HILTON:

22 Q. Dr. Barreto, this is Defendants' Exhibit Number 17.

23 This is a summary presentation of election data that's  
24 publicly available of the sort that you yourself testified  
04:07:48 25 that you gathered and that's described in the exhibit.

1 And this shows the history of Senate District 10 going  
2 back to 2002.

3 **A.** Okay.

4 **Q.** When you are -- I'd like to ask you about the document  
5 when you are ready.

6 **A.** Yeah. I found the exact chart in the book.

7 **Q.** So you would agree that historically, going back  
8 farther in time than you chose to look, this is a  
9 competitive district that goes back and forth between

10 Democrats and Republicans, correct?

11 **A.** Well, it depends on how the district is defined. From  
12 a political science standpoint, we want to understand how  
13 the electorate was actually voting in that district. If  
14 at some point in time the district included parts of  
15 Collin or Dallas or other counties, that could  
16 substantially change the results.

17 So the reason I focused on more recent elections when  
18 I talk about, quote, "Senate District 10" is I'm  
19 interested in the composition of Senate District 10 as  
20 close to how it is now as opposed to in 2002 or 1980 or  
21 other years which would have been -- the district itself  
22 could have had entirely different voters.

23 So I want to clarify that in saying whether or not I  
24 agree or disagree that, quote, "Senate District 10 used to  
25 be more competitive," it might have been an entirely

1 different set of voters in an entirely different  
2 geography. So I can't draw that conclusion.

04:09:27

3 **Q.** Can you draw that conclusion with respect to 2014  
4 since that was also an election that occurred under the  
5 same plan, which is the benchmark plan?

6 **A.** 2014 is definitely more recent than 2002.

7 **Q.** And it elected a Republican?

04:09:47

8 **A.** I believe in the Senate election it did. I'm not sure  
9 other elections. It just says "R" and "D." So I'm not  
10 sure what candidates you are referring to here.

11 **Q.** And this is Senate District 10. This is a Senate  
12 District 10 election.

13 **A.** For senator?

14 **Q.** Yes, sir.

04:09:54

15 **A.** Okay. Thank you.

16 **Q.** Yes, sir.

17 **A.** So in 2014 it did elect a Republican. That is true.

04:10:13

18 **Q.** But, again, you didn't go back past 2018. So any  
19 analysis you conducted with respect to Senate District 10,  
20 even though it was the same map in 2014, you didn't go  
21 back to when it was electing a Republican? You only went  
22 back to when it elected a Democrat. I just want to make  
23 sure I am understanding what you looked at.

04:10:26

24 **A.** I think that mischaracterizes it because I wasn't  
25 concerned whether it elected Democrat or Republican. I

1 was interested in the most recent composition.

2 As we have discussed a lot, Senate District 10's  
3 demographics have changed rapidly. So even across four  
4 years there are different sets of voters in there in '08,  
04:10:43 5 '12, '14, '20.

6 And so I wasn't making decisions based on who won or  
7 lost but rather trying to get snapshots of electorates  
8 that were more contemporary with the electorate we're  
9 talking about today.

04:10:58 10 **Q.** And when you were deciding the window of that  
11 snapshot, you would only go so far back as Senate District  
12 10 had elected a Democrat in 2018. You didn't consider  
13 the entirety of the time that the benchmark plan had been  
14 in place?

04:11:14 15 **A.** I have been pretty clear that I focused on 2018 and  
16 2020 because I thought they were the most reflective of  
17 the current electorate.

18 **Q.** And you decided that in 2014, when Senate District 10  
19 elected a Republican, that it wasn't reflective of the  
04:11:32 20 current electorate? That was your decision not to go back  
21 that far?

22 **A.** That completely mischaracterizes my decision. I did  
23 not decide, quote, because it elected a Republican not to  
24 analyze it. I looked at the most recent elections. This  
04:11:44 25 is a district that has had population churn and change.

1           So I'm most interested in the electorate as it exists  
2 today. And 2020 is the most relevant, but I wanted to  
3 include at least one midterm election. And so 2018 is the  
4 most recent midterm election.

04:12:05

5           Those two elections, regardless of who they elected,  
6 should give us a pool of voters that are the most close to  
7 the pool of voters we have now.

04:12:26

8 **Q.** And so we're -- your choice to only go back to 2018,  
9 this is for Section II of your report, which is titled  
10 "Benchmark SD-10 is a Performing Crossover District"?  
11 That's the section of your report we're talking about?

12 **A.** Yes.

04:12:39

13 **Q.** Okay. And so there is text in Paragraphs 9 and 10 on  
14 Page 4, and there is the table on Page 5. That's the  
15 entirety of Section II of your report?

16 **A.** I think so.

17 **Q.** Okay. If you can look on Page 4 in your report and  
18 tell me where it says in your report your reasons for only  
19 going back to 2018.

04:12:59

20 **A.** Which paragraphs do you want me to read? Nine and  
21 ten?

22 **Q.** Well, I'll tell you, Dr. Barreto, it's not there. You  
23 don't explain in your report why you only went back to  
24 2018, do you?

04:13:18

25 **A.** I think I just explained it now, but let me read these



1 and see if there is something in there that jogs my  
2 memory.

3 Okay. What is your question?

04:13:46

4 **Q.** Paragraphs 9 and 10 of your report do not explain why  
5 you chose to only go back to 2018, do they?

6 **A.** No.

7 **Q.** And so whatever you may have done in making that  
8 decision, that's not contained in your report?

04:14:02

9 **A.** I don't understand the question, but there is nothing  
10 other than Paragraphs 9 and 10. I will agree with that.

11 **Q.** All your testimony about what you looked at and about,  
12 you know, going back two years, that's the snapshot of the  
13 electorate. You testified about that today. But that is  
14 not described in your report, and whatever you looked at  
15 in coming to that conclusion is not described in your  
16 report, correct?

04:14:17

17 **A.** Whatever -- correct.

18 **Q.** All right. I want to look at the benchmark and  
19 enacted maps with you now. And I just want to, again,  
20 clarify.

04:14:48

21 You didn't include any opinion about legislative  
22 intent in your report or in your testimony today, correct?

23 **A.** I don't --

04:14:57

24 **Q.** We talked about that earlier. I just want to make  
25 sure I recall correctly.

1 **A.** I don't recall. I now have my whole report in front  
2 of me. So I would have to look. I don't want to  
3 misspeak. So if there is a sentence in there, it's in  
4 there; but I don't recall having a section on the intent.

04:15:11

5 **Q.** Fair enough. And you haven't offered one today in  
6 your testimony either, correct?

7 **A.** I mean, if you want to ask me about it, I can give you  
8 some opinions; but I don't have a section in here  
9 called -- I don't see -- let me just thumb through it.

04:15:30

10 **Q.** I think we are on the same page, Dr. Barreto.

11 **A.** Okay.

12 MR. HILTON: Defendants' Exhibit Number 2,  
13 please.

14 BY MR. HILTON:

04:15:40

15 **Q.** Dr. Barreto, on the screen and in the binders in front  
16 of you, Defendants' Exhibit Number 2 is a partisan shading  
17 map for the benchmark Senate District 10. Have you seen  
18 this map or a partisan shading map like it previously?

19 **A.** I don't know if I have seen this map, but I have seen  
20 partisan shading maps before.

04:16:08

21 **Q.** So you are comfortable analyzing a partisan shading  
22 map as a general matter?

23 **A.** Well, I need to see the key. But I have the book, so  
24 I can refer to the book. It's a little clearer.

04:16:23

25 **Q.** And, please, take your time with the exhibit. I'll

1 represent to you and to make clear for the record, in this  
2 exhibit Democrat voting areas in the 2020 general election  
3 for president are depicted as blue and Republican voting  
4 areas are depicted as red.

04:16:43

5 **A.** I would agree with that.

6 **Q.** Okay. Did you look at any partisan shading maps in  
7 coming to your opinions? None are described in your  
8 report. So --

9 **A.** I don't recall any, no.

04:17:00

10 **Q.** And you agree that you don't discuss any partisan  
11 shading maps in your report?

12 **A.** Correct.

13 **Q.** And partisan shading, that's different from racial  
14 shading, correct?

04:17:15

15 **A.** Well, this map appears to be at the VTD precinct  
16 level, and it appears to be shading the percent of the  
17 vote won in the presidential.

18 The racial shading maps that you referred to earlier  
19 were at the bloc group, which is a census geography level,  
20 and were shading in the percent White or minority.

04:17:37

21 **Q.** And you included racial shading maps in your reports?

22 **A.** I did.

23 **Q.** You have no idea whether Senator Huffman or Sean  
24 Opperman or Anna Mackin ever looked at racial shading at  
25 any point during the redistricting process, do you?

04:17:54

1 **A.** I do not.

2 **Q.** And you weren't in the room with them when they were  
3 doing any of their work?

4 **A.** I was not.

04:18:03

5 **Q.** You have not reviewed their RedAppl account or  
6 anything else related to their map-drawing process?

7 **A.** No.

8 **Q.** You never spoke to those people?

9 **A.** No.

04:18:10

10 **Q.** And so you would agree you can't provide any insight  
11 as to what those three people were doing when they were  
12 working on crafting SD-10?

13 **A.** Now that --

14 **Q.** Other than your opinions here today.

04:18:20

15 **A.** Right. I mean, I think it's reasonable for people who  
16 are extremely familiar with map drawing to be able to look  
17 at maps and try to offer opinions on what might have  
18 happened. I agree that I have had no communication with  
19 them, and I was not involved in their map-drawing process.

04:18:39

20 **Q.** And we also discussed earlier you don't go into any  
21 detail about any map drawing related to your opinion in  
22 your report, correct?

23 **A.** I think I described the racial shading maps that are  
24 in my report.

04:18:54

25 **Q.** Fair enough. You would agree that Tarrant County is a

1 Republican county, wouldn't you?

2 **A.** It would depend on, you know, which election. You  
3 would have to look at which election. I can't recall if  
4 Congressman O'Rourke carried the county in '18 or not.

04:19:11

5 **Q.** Have you been in the courtroom all day?

6 **A.** No.

7 **Q.** Commissioner Brooks was here, the County Commissioner  
8 for Tarrant County. He testified that he agreed that  
9 Tarrant County was a Republican county.

04:19:23

10 **A.** Okay.

11 **Q.** So do you have any reason to disagree with him?

12 **A.** Well, I would look at election results as a political  
13 scientist. As I said, I recall that Congressman O'Rourke  
14 carried a lot of places in the '18 Senate race that  
15 suggested changing tides. I'm not saying he carried  
16 Tarrant County, but I'd like to look at election results  
17 to know exactly how the county as a whole votes on a  
18 variety of different elections.

04:19:38

19 **Q.** Fair enough.

04:19:54

20 MR. HILTON: Brian, will you pull up Defendants'  
21 Exhibit Number 3, please.

22 MR. DUNN: Excuse me. That number was 3?

23 MR. HILTON: Yes, sir. The enacted version.

24 BY MR. HILTON:

04:20:06

25 **Q.** I'm asking Brian to put up the enacted and benchmark

1 side by side.

2 **A.** Okay.

3 **Q.** I want to look at them together with you and see if we  
4 can discover which areas moved in and out of Senate  
04:20:21 5 District 10 as they are depicted on these maps.

6 **A.** Okay.

7 **Q.** All right. Dr. Barreto, let's start with this area in  
8 the middle of Tarrant County. On the benchmark map we  
9 have got -- the record is going to be terrible on this.

04:20:49 10 It's difficult to describe, but I think you can see where  
11 I am looking at. It's the area that juts up a little bit  
12 from the center of Tarrant County.

13 And in the enacted map do you agree that area has been  
14 removed from Senate District 10 and put into Senate  
04:21:04 15 District 9? Do you see the area that I'm talking about?

16 **A.** I think so, yes.

17 **Q.** It's a dark blue area, correct?

18 **A.** Yes.

19 **Q.** And so according to the legend on these maps, a dark  
04:21:16 20 blue area indicates a high percentage of Democrat voters,  
21 correct?

22 **A.** I wouldn't say "a high."

23 **Q.** Well, it's the highest as indicated on this -- on the  
24 legend of this map, correct?

04:21:27 25 **A.** It's at least above 57 percent, but we don't know if

1 it's 90 percent or 58 percent.

2 **Q.** Okay. But according to this exhibit, it's above  
3 57 percent?

4 **A.** That appears to be right, based on the shading, yes.

04:21:40

5 **Q.** Okay. So would you agree that's a solidly Democrat  
6 county if it's shaded that color of blue or, excuse me, a  
7 solidly Democrat VTD?

04:22:05

8 **A.** I would say 57-43 should consistently perform  
9 democratically but, you know, we see vote swings from  
10 election to election and depending on who turns out.

04:22:19

11 And so this is one of the questions about a map like  
12 this is that it would have been nice if there was a  
13 75 percent and above break because that would have given  
14 us the ability to identify what you just described as  
15 solidly Democratic.

04:22:36

16 **Q.** Sure. It may be more solidly Democrat for one  
17 Democrat versus another? In other words, candidates  
18 matter, the race matters, voters matter, the issues  
19 matter. There are lots of things that could go into that  
20 high level of Democrat support or whether it's, you know,  
21 just above 57 percent?

22 **A.** Well, I would characterize something that was  
23 75 percent or higher as solidly Democratic.

04:22:50

24 Something that was just at the 50 -- 57-43 range would  
25 probably be, you know, better than leaning Democratic, but

1 not quite solidly.

2 **Q.** Fair enough. Let's look at the bottom right, I guess,  
3 southeast area of Tarrant County in both maps. There is a  
4 lot of blue there that indicates Democrat-leaning or above  
04:23:17 5 57 percent Democrat areas. In the benchmark plan there  
6 are some solidly blue, dark blue VTDs that are included in  
7 Senate District 10. And in the enacted map we see that  
8 all of the -- or most of the darker counties in southeast  
9 Tarrant County have been moved into other districts and  
04:23:42 10 out of Senate District 10, correct?

11 **A.** I see that portion I think you are talking about in  
12 the benchmark. It's the portion that comes up against 22;  
13 is that right?

14 **Q.** Yes, sir.

04:23:59 15 **A.** Yes, I see that; and it appears to have been moved  
16 out.

17 **Q.** And north of that area, in kind of the northeastern  
18 quadrant of Tarrant County, there are some red-colored  
19 VTDs and some blue-colored VTDs in this area that juts up  
04:24:15 20 into the northeastern part of Tarrant County?

21 **A.** I see that.

22 **Q.** You'll agree with me that those counties, blue and  
23 red, have been moved into other districts?

24 **A.** Those counties are in other districts, yes.

04:24:27 25 **Q.** In the enacted version?



1 **A.** In the enacted version.

2 **Q.** And then the last area that I want to look at with you  
3 is in the western portion of Tarrant County in the middle.

4 In the benchmark plan you have this slice of blue that's

04:24:45

5 in western Tarrant County that's up in Senate District 12.

6 In the enacted plan there is a few blue VTDs that have

7 been put back in Senate District 10, correct?

8 **A.** I see that, yes.

9 **Q.** Okay. So there is a lot of movement in these Democrat

04:25:06

10 and some Republican areas in and around Senate District 10

11 in the enacted plan as compared to the benchmark plan,

12 correct? Do you agree with that?

13 **A.** I agree there is movement. I mean, I would like to be  
14 more precise. I think it was something like 157 VTDs got

04:25:25

15 moved out and 387,000 people, but there is definitely

16 movement.

17 **Q.** Sure. And we'll look at that table from your report

18 in a minute. The impacts that we looked at here, those

19 bear heavily on those Democrats, right? Those Democrats

04:25:45

20 that are getting moved out of SD-10, they now have

21 different candidates to vote for. Do you agree?

22 **A.** Correct. A lot of people who are moved out of SD-10  
23 will no longer be on the SD-10 ballot.

24 **Q.** Those Democrats that are moved out of SD-10, they now

04:26:07

25 have other people in their Senate district with them that

1 they weren't previously sharing with Senate District 4?

2 **A.** Well, I don't know that they are Democrats that got  
3 moved out. I think that, you know, these precincts that  
4 you identified are voting -- many of them, you know,  
5 between 50 and 57 percent are higher Democratic and, at  
6 least, like this presidential. And so if they are no  
7 longer in SD-10, they will have different candidates on  
8 their ballots.

9 **Q.** Maybe I can be a little more precise. These  
10 Democratic-leaning areas or perhaps strongly Democratic  
11 areas but at least Democratic-leaning areas, those areas  
12 that have been moved out of Senate District 10, they are  
13 going to be paired with different voters that they may not  
14 have been paired with before, correct?

15 **A.** Correct.

16 **Q.** And so these Democratic-leaning areas, they may or may  
17 not be able to elect a Democrat now, depending on who else  
18 is in their district, correct?

19 **A.** It will entirely depend on the new composition of the  
20 district as to which candidates are able to win.

21 **Q.** The same for the Democrats that -- or the  
22 Democratic-leaning areas that remain in Senate District  
23 10? Their ability to elect a Democrat depends on who else  
24 is in their district?

25 **A.** Well, for all voters.

1 Q. So the impacts that we're looking at here on these  
2 maps, those are Democrats -- those are impacts that are  
3 bearing on these Democratic-leaning areas, correct?

4 A. I don't look at this as bearing on Democrats or  
04:27:56 5 Republicans because we don't know the party registration,  
6 which we don't have here in Texas. We don't have any sort  
7 of sworn statements. We just know that these are how the  
8 VTDs voted.

9 And so I disagree with the characterization that this  
04:28:14 10 was moving Democrats around and now Democrats have  
11 different, you know, ballot choices. It's just all the  
12 voters who live there got moved into different districts.

13 Q. Including the voters in the Democratic-leaning areas  
14 that we just went over?

04:28:30 15 A. All of the voters who got moved are no longer in  
16 SD-10.

17 Q. So you testified earlier that in your opinion -- well,  
18 strike that.

19 What -- just to clarify a question, what would you say  
04:28:58 20 is a margin that indicates a safe Republican or Democrat  
21 VTD if you are analyzing it based on a given election? At  
22 what threshold would, in your opinion, it be a safe  
23 Republican or Democrat?

24 A. Well, a VTD doesn't elect candidates. It's only one  
04:29:17 25 of perhaps two or three hundred. So nothing makes a VTD

1 by itself safe. It's the district as a whole. And each  
2 VTD is a House district, a Senate district, a  
3 Congressional district. So it's the district as a whole  
4 that should be analyzed.

04:29:35

5 I think earlier I agreed with the characterization  
6 that if this chart had gone up to 75 percent or higher, we  
7 might call those solidly Democratic-leaning VTDs; but it  
8 doesn't make them safe because the VTD itself is not  
9 producing anything.

04:29:53

10 **Q.** Fair enough. So if we use the word "leaning" instead  
11 of "safe," is 75 percent a number that you feel goes from  
12 leaning to solidly leaning or however you want to describe  
13 it?

04:30:07

14 **A.** Well, I'm not trying to put any sort of specific  
15 threshold. I would agree that a precinct that voted  
16 75 percent Democrat is more solid than one that voted  
17 57 percent Democrat. And the same thing on the Republican  
18 side.

04:30:23

19 So we would want to know what each precinct was; and  
20 then we could assess, you know, on a full spectrum of zero  
21 to 100 how Democratic or Republican it was.

04:30:41

22 **Q.** But you agree, as a general matter, that you can look  
23 at a map like this, such as Defendants' Exhibit Numbers 2  
24 and 3, and you can look at areas based on their  
25 performance in a given election and how they voted for

1 Democrat or Republican candidates? You can look at it  
2 through a partisan lens; is that correct?

3 **A.** Well, you can look at precincts with election shading  
4 through a partisan lens, for sure.

04:31:01

5 **Q.** And you don't have to analyze a map through a racial  
6 lens, which is, I understand, the nature of your testimony  
7 today; but, you know, you don't have to do that. You can  
8 also analyze and look at a map with a partisan lens with  
9 partisan shading?

04:31:16

10 **A.** Well, I will hazard an opinion; and you can tell me if  
11 I'm going off of my expertise.

12 I would say -- I think you asked me if you have to. I  
13 would say, based on my understanding and the history of  
14 the Voting Rights Act, that there are situations in which  
15 you have to understand --

04:31:29

16 **Q.** No doubt, as a legal matter, that would be correct.

17 **A.** -- racial demographics of a district before you change  
18 it and unpack it.

19 **Q.** No doubt, as a legal matter, that would be correct.

04:31:40

20 I'm talking about when you are looking at maps and when  
21 you are looking at who is moved into and out of a  
22 district -- I mean, we just did it together. We looked at  
23 which areas were leaning more Democrat versus leaning more  
24 Republican. We don't have to look at it through the lens

04:31:53

25 of race, do we?

04:32:07

1 **A.** Well, it would depend on the district. If this was a  
2 district that a court had previously ordered to be  
3 protected, you would probably want to look at it through  
4 that lens. So sometimes you do have to have a certain  
5 extra type of analysis, and other times you don't. It  
6 depends on the context.

04:32:23

7 **Q.** Perhaps in the redistricting context you are correct;  
8 but I'm talking with you about just looking at the maps,  
9 not talking about that situation. You can look at a map  
10 with partisan shading instead of racial shading, correct?  
11 You don't have to look at it through a racial lens?

12 **A.** You can.

04:32:43

13 **Q.** Let's go to that table that you prepared, Dr. Barreto,  
14 Plaintiffs' Exhibit Number 44, Page 26. This is one of  
15 your analyses of how voters moved into and out of this  
16 district. This table shows both partisan metrics and  
17 Anglo-versus-minority metrics, correct?

18 **A.** Let me turn there to Table 9. Yes. That's correct.

04:33:06

19 **Q.** We've got two columns here. One says "Biden percent"  
20 and one says "Trump percent." That's referring to the  
21 Trump/Biden 2020 presidential election?

22 **A.** Yes.

04:33:19

23 **Q.** That's the same as the data that we just looked at on  
24 Defendants' Exhibit Numbers 2 and 3? The same context,  
25 correct?

1 **A.** I think so, yes.

2 **Q.** And so when you analyzed and put in your report voters  
3 that moved in and moved out, you found that voters that  
4 were moved out of SD-10 were voting for President Trump at  
5 a 46 percent rate and voters that moved into Senate  
6 District 10 were voting for President Trump at a  
7 77 percent almost rate, correct?

04:33:34

8 **A.** Correct.

9 **Q.** Likewise, voters that were moved out, they were  
10 voting, you know, 52 percent, a slight majority, were  
11 voting for Biden. The voters that were moved in about  
12 20 -- 22 percent or so were voting for Biden, correct?

04:33:49

13 **A.** Correct.

14 **Q.** And so these moves made Senate District 10 more likely  
15 to elect a Republican, correct?

04:34:04

16 **A.** Yes.

17 **Q.** And then the racial makeup of the districts here, does  
18 this chart reflect VAP or CVAP?

19 **A.** I think VAP, but I would have to check my notes. I'm  
20 pretty sure it's VAP.

04:34:30

21 **Q.** Okay. All right. Thank you, Dr. Barreto.

22 I want to shift gears a little bit, and I want to talk  
23 about the specific contests that you chose throughout your  
24 report. All of the contests you chose throughout your  
25 report were general election contests, correct?

04:35:02

1 **A.** In this Exhibit 44, yes.

2 **Q.** And you didn't look at any primary contests?

3 **A.** Not in this first report, no.

4 **Q.** Okay. You agree that primary elections are important?

04:35:20 5 **A.** Depends on the question.

6 **Q.** Do they matter?

7 **A.** Depends on the question I'm trying to answer.

8 **Q.** Just, generally, do they matter to voters?

04:35:34 9 **A.** Well, it depends if the voters are interested. I  
10 mean, that's an extremely vague question.

11 **Q.** Does it have an impact on voters?

12 **A.** It can.

13 **Q.** It can because in a primary election that determines  
14 which candidate is going to go on to the general election,  
04:35:47 15 correct?

16 **A.** Sometimes there is a runoff, but yes.

17 **Q.** Sure. Often there is a runoff in Texas. Primary  
18 elections are different from general elections in many  
19 ways, correct?

04:36:01 20 **A.** Yes.

21 **Q.** Okay. And so since they are different, they are going  
22 to reveal different information about voter preferences?

23 **A.** Well, the main way in which they are different is that  
24 they are a much smaller subset of the electorate. And so  
04:36:25 25 they don't reveal preferences about the entire electorate.



1 Q. Sure. That's one difference. I agree with you.

2 They also don't reveal much about party affiliation,  
3 correct? Because if you are voting in a Democratic  
4 primary, as a matter of law in Texas you are affiliated  
5 with the Democratic Party for that year?

04:36:47

6 A. So I would say they reveal a lot about party  
7 affiliation. If I have to vote in the Democratic primary  
8 and that makes me a Democrat, that reveals a lot about me.

9 Q. No doubt. No doubt. Understood. I think we can  
10 agree on that.

04:37:01

11 So you agree that party affiliation is extremely  
12 important in both -- do you agree that party affiliation  
13 is important in general elections, as well?

14 A. Important to what?

04:37:16

15 Q. Is it a significant indicator of voter behavior?

16 A. Well, it depends on the type of question you are  
17 trying to answer.

18 Q. What kind of question can it answer?

19 A. Well, if you were writing a political science paper to  
20 present at a conference and you were looking at  
21 favorability of the president, you might have a control  
22 variable out of 20 different variables for party  
23 affiliation.

04:37:32

24 Q. It's an additional variable that you have to consider  
25 when you are looking at a general election?

04:37:51

1 **A.** You don't have to consider it. It --

2 **Q.** You could.

3 **A.** -- depends on the type of question you are answering.

04:38:04

4 **Q.** Fair enough. If you are analyzing a party primary  
5 election, however, and you want to understand the voting  
6 behavior of Democrats, well, if you look at the primary  
7 election, you know you are dealing with only Democratic  
8 voters, correct?

04:38:18

9 **A.** Democrats or people who chose to vote in the  
10 Democratic primary is who you would be dealing with.

11 **Q.** Sure. So if you are analyzing that group of voters,  
12 well, party affiliation isn't a variable anymore because  
13 we know they are all Democrat-affiliated, which is a  
14 matter of law under Texas law?

04:38:34

15 **A.** I don't follow your question.

16 **Q.** Well, I think the main point is this: It's not like  
17 for a primary election you can't analyze them. You can  
18 analyze primary elections with either EI or RPVA methods,  
19 correct?

04:39:01

20 **A.** It's possible to, yes.

21 **Q.** Okay.

22 **A.** It just depends on the question you are trying to  
23 answer, meaning the question you have been tasked with for  
24 an analysis.

04:39:09

25 **Q.** Sure. And you didn't conduct any EI analysis or RPVA

1 analysis for your report, correct -- of primary elections  
2 for your report, correct?

3 **A.** For this first report, I did not.

4 **Q.** Okay. And you could have?

04:39:26 5 **A.** If they were relevant, I could have.

6 **Q.** You know how to do it, correct?

7 **A.** How to analyze elections? Yes.

8 **Q.** Including primary elections?

9 **A.** Sure.

04:39:39 10 **Q.** You have the data available to you?

11 **A.** We could download it off of the TLC website.

12 **Q.** We could do that right now if we wanted, right?

13 **A.** Probably.

14 **Q.** And you understand how to apply these methods of  
04:39:56 15 analysis to primary contests?

16 **A.** When they are relevant, yes.

17 **Q.** Okay. You have worked on primary politics before as a  
18 consultant to the Biden campaign. You said that, correct?

19 **A.** I joined after the primary was over.

04:40:12 20 **Q.** I understand. So you would agree that you had  
21 multiple racially contested elections in the primaries in  
22 the Senate District 10 area to choose from and that you  
23 just chose not to analyze them, correct?

24 **A.** My opinion was they were not relevant to understanding  
04:40:30 25 the entire electorate because primaries only focus on a

1 subset of voters who participate. I was attempting to  
2 answer the question of how are voters as a whole behaving,  
3 and so that's why I focused on general elections.

04:40:50

4 **Q.** Did you discuss primary elections at all in your  
5 initial report?

6 **A.** I don't believe so, no.

7 **Q.** Did you explain why you didn't discuss primary  
8 elections in your initial report?

04:41:02

9 **A.** I only focused on the relevant elections. So I only  
10 discussed the elections which were relevant.

11 **Q.** And you didn't in your initial report explain why only  
12 general elections were relevant and why you chose to  
13 disregard primary elections?

04:41:17

14 **A.** I think I explained that I was discussing the  
15 elections which were relevant to understanding voting  
16 patterns. So those are general elections.

17 **Q.** Under no circumstances -- it's your testimony that  
18 under no circumstances looking at a primary election could  
19 give you relevant information to look at voting patterns?

04:41:29

20 **A.** Well, it depends on the question you are trying to  
21 answer. This is what I have been trying to explain  
22 throughout.

23 There are times where it could be incredibly relevant  
24 to look at 30 primary elections to observe large patterns  
25 across multiple primary elections. It depends on the

04:41:48

1 question that you are being tasked with and that you are  
2 trying to answer.

04:42:06

3 In this case we are trying to determine are Black and  
4 Hispanic voters cohesive in voting in coalition for  
5 candidates of choice. The district in question is a  
6 partisan district. And so the general elections are by  
7 far the relevant ones.

04:42:26

8 **Q.** So you did not look at primary elections because you  
9 don't think they are relevant to the question of

10 Black/Hispanic voter cohesion?

11 **A.** Not in a general election.

12 **Q.** Okay. A primary election can't tell you anything  
13 about whether Blacks and Hispanics vote together for  
14 redistricting purposes?

04:42:40

15 **A.** It doesn't tell you whether or not they are cohesive  
16 in the election that matters, which is the election to  
17 send your representative to Austin. That's the general  
18 election.

04:42:52

19 The question is whether or not these groups are voting  
20 together to send a candidate to the state capitol to  
21 represent them. And so that's why I focus on general  
22 elections.

04:43:08

23 **Q.** So if you assume that primary elections aren't  
24 relevant and don't matter, then you don't have to look at  
25 primary elections? Is that your testimony?

1 **A.** My testimony is that in this instance, answering this  
2 question, primary elections were not relevant.

3 **Q.** Answering the question of whether Black and Hispanic  
4 voters in Senate District 10 vote cohesively as a group,  
04:43:23 5 it's your testimony that primary elections were completely  
6 irrelevant to that question?

7 **A.** My testimony is that they were not the relevant  
8 elections to understand whether or not Blacks and  
9 Hispanics vote cohesively for their candidate of choice to  
04:43:37 10 represent them.

11 **Q.** To represent them. So, in other words, just  
12 definitionally, you just set out only to look at general  
13 elections?

14 **A.** I can explain this again if you want.

04:43:53 15 **Q.** Well, you had multiple racially contested primary  
16 elections that you could have looked at, correct? You  
17 could have done the analysis on them?

18 **A.** There are primary elections which took place in Senate  
19 District 10 in the state of Texas.

04:44:09 20 **Q.** Some of those were racially contested between Black  
21 voters and Hispanic voters, correct?

22 **A.** Well, the election is never set out to be contested  
23 between voters. I believe you probably meant to ask were  
24 there candidates of a different race or ethnicity, which  
04:44:25 25 is probably true.

1 Q. And voters of different races or ethnicities would  
2 support different candidates sometimes in primaries in  
3 Tarrant County and Senate District 10, correct, in that  
4 area?

04:44:36

5 A. They might.

6 Q. You didn't look? So you don't know?

7 A. In this first report I only focused on general  
8 elections.

04:44:47

9 Q. You didn't look? You didn't look at primary elections  
10 in your first report?

11 A. Correct.

12 Q. Okay. So --

13 MR. HILTON: Can you bring up Defendants' Exhibit  
14 38.

04:44:54

15 BY MR. HILTON:

16 Q. You didn't look at primary results for House District  
17 90, which is within Tarrant County and wholly contained  
18 within the benchmark SD-10? You did not look at that,  
19 correct?

04:45:06

20 A. I did not.

21 Q. Okay. So you did not learn, then, that in the  
22 Democratic primary in House District 90 White candidate  
23 Lon Burnam was consistently elected until 2012 when  
24 Hispanic candidate Carlos Vasquez challenged him? You  
25 didn't consider that?

04:45:27

1 **A.** I did not look at this election.

2 **Q.** Okay. So you didn't see that White candidate Lon  
3 Burnam defeated Hispanic candidate Carlos Vasquez in the  
4 2012 Democratic primary for House District 90?

04:45:43

5 **A.** I did not look at this election.

6 **Q.** And then the following election in 2014, Ramon Romero  
7 was able to defeat Lon Burnam in the Democratic primary?  
8 You didn't consider that?

9 **A.** I did not look at that election.

04:46:03

10 MR. HILTON: Let's go to Defendants' Exhibit  
11 Number 39.

12 BY MR. HILTON:

13 **Q.** Did you consider any primary elections for  
14 Congressional District 33?

04:46:13

15 **A.** I did not.

16 **Q.** So you didn't consider the fact that Black candidate  
17 Marc Veasey defeated Hispanic candidate Domingo Garcia in  
18 a runoff in 2012 by a margin of 37:25?

19 **A.** I did not look at that election.

04:46:32

20 **Q.** So it wasn't relevant to your analysis that a Black  
21 and Hispanic -- a Black and Hispanic candidate met in a  
22 primary and that one was elected over the other? That  
23 didn't occur to you as something to analyze?

24 **A.** It was not relevant because Black and Hispanic voters  
25 voted in strong cohesion for Mr. Veasey. He is clearly

04:46:52



1 their candidate of choice to represent them in Washington,  
2 DC.

3 **Q.** In the general election they voted for Mark Veasey?

4 **A.** Correct. Correct.

04:47:06 5 **Q.** You don't know whether they voted for Mark Veasey in  
6 the primary election?

7 **A.** I know that Hispanic candidates, Hispanic voters  
8 prefer Mark Veasey.

9 **Q.** In the general election?

04:47:18 10 **A.** Correct.

11 **Q.** You don't know and you didn't analyze, for purposes of  
12 your report and your opinions, whether they supported Mark  
13 Veasey in the primary election?

14 **A.** I think I already answered that I did not consider  
04:47:31 15 Senate or CD-33 primary elections.

16 **Q.** And you didn't consider that, again in 2014, Black  
17 candidate Mark Veasey supported by Black voters defeated  
18 Hispanic candidate Tom Sanchez in the primary? You didn't  
19 consider that?

04:47:45 20 MR. DUNN: I would like to interject an objection  
21 here. Number one, it feels like a lot of this is asked  
22 and answered. The expert has a rebuttal report that deals  
23 with the primary election. So as long as we're going to  
24 keep asking, "Did you do it? Did you do it in your first  
04:47:58 25 report?" so that it's clear kind of the fictional

1 situation we're trying to create with this question.

2 MR. HILTON: Well, I disagree with the premise of  
3 the objection.

4 JUDGE GUADERRAMA: I'll overrule the objection.

04:48:10

5 You can go ahead and go on.

6 MR. HILTON: Thank you. I think this will be  
7 brief. I appreciate the time, Your Honor.

8 BY MR. HILTON:

04:48:21

9 Q. Again, in 2016 a Black candidate defeated Hispanic  
10 candidate Carlos Quintanilla about 2:1? You didn't  
11 consider that and look at that?

12 A. In my initial report?

13 Q. In your initial report.

14 A. In my initial report I did not examine that election.

04:48:30

15 Q. Okay. And on and on, Black candidate Mark Veasey  
16 consistently defeats Hispanic candidate challengers in  
17 Democratic primaries in Congressional District 33, the  
18 same area of the state that you analyzed. You didn't  
19 think that was relevant to the question of whether Black  
20 and Hispanic people vote cohesively for Senate District 10  
21 for your initial report?

04:48:48

22 A. It's not relevant.

23 Q. That's your opinion: It's not relevant?

24 A. It's not relevant.

04:48:58

25 MR. HILTON: Okay. Let's go to Defendants'

1 Exhibit Number 36. This is -- I'm sorry. Let's strike  
2 this one.

3 Go to Defendants' Exhibit Number 35. Defendants'  
4 Exhibit Number 35.

04:49:18

5 BY MR. HILTON:

6 **Q.** Have you seen Defendants' Exhibit Number 35 before?

7 **A.** I am turning to it in the book. Okay.

8 **Q.** Do you recognize this as an EI voting analysis?

04:49:55

9 **A.** I saw this, and it is unlike any EI voting analysis I  
10 have ever seen in my life. So I would say the answer to  
11 your first question is, no, I did not recognize it as an  
12 EI analysis. I had to spend some time looking at the  
13 table and trying to discern what it was.

04:50:10

14 **Q.** Well, let's look at the table together. Let's go to  
15 -- I believe it's the fifth page of the exhibit, 2012  
16 Democratic.

04:50:31

17 So this exhibit is an EI analysis of benchmark Senate  
18 District 10 that includes both general elections and  
19 primary elections. So you didn't conduct any analysis  
20 like this because you didn't do primary elections,  
21 correct?

04:50:50

22 **A.** I don't know who conducted this analysis. I wasn't  
23 given any of the data as a part of this analysis, so I  
24 don't know how accurate it is. I saw this page as a PDF  
25 and glanced at it.

04:51:06

1 Q. And I'll just -- I'll just ask you to accept this  
2 document on its face for the purposes of my remaining  
3 questions. I understand that you haven't seen the  
4 underlying data. That's your testimony just now. But  
5 I'll just ask you to look at the face of this document  
6 with me. Do you understand?

04:51:20

7 A. I understand, but I'm telling you as a data scientist  
8 I'll probably give you a lot of "I can't conclude" because  
9 I don't know who ran this. I don't know what methodology  
10 they used. I don't know how accurate it is. And I  
11 haven't had a chance to look at the underlying data. But  
12 we can try.

04:51:32

13 Q. And I'm not asking you to opine on any of those  
14 questions. I'm just asking you to read the document with  
15 me.

16 A. Okay.

04:51:58

17 Q. Okay. 2012 Democratic runoff, this document shows  
18 that the estimated Hispanic vote for candidate Paul Sadler  
19 was about 60:40. The estimated Black vote went 55:45, or  
20 so, for Grady Yarbrough as opposed to Paul Sadler.

21 That's what this document shows, correct?

22 A. That's what this document shows. I have considerable  
23 questions about the accuracy and validity of it.

04:52:12

24 Q. And again, I'm not asking you about that. I'm asking  
25 you about what this document shows. That's what this

1 document shows, correct?

2 **A.** Yes.

3 **Q.** Okay. So if this document shows that, at least for  
4 this election, Black voters and Hispanic voters had  
04:52:24 5 different preferences -- slightly different preferences?  
6 That's what this document shows?

7 **A.** Maybe. It maybe doesn't even show that.

8 **Q.** From the face of the document, that's what it shows,  
9 correct?

04:52:35 10 **A.** Well, we don't know what the -- the method that was  
11 used. We don't know what the confidence bands around the  
12 Black estimate are. It could be that they are larger than  
13 10 percent. And it's extremely difficult to give this  
14 document any credibility without knowing the methodology  
04:52:53 15 and the underlying data.

16 MR. HILTON: I think that's all I have for you  
17 now, Dr. Barreto. Thank you for your time.

18 I will pass the witness.

19 JUDGE GUADERRAMA: Thank you, Mr. Hilton.

04:53:34 20 Mr. Dunn.

21 **REDIRECT EXAMINATION**

22 BY MR. DUNN:

23 **Q.** Just a couple of short areas of inquiry here. I'll  
24 just pick up where we left off.

04:53:55 25 The EI tables that you were just shown, let me start

1 first with when you produced your report by the deadline  
2 earlier this month that the Court imposed. Did you  
3 produce other items with it?

4 **A.** Yes, I did.

04:54:08

5 **Q.** What else did you produce?

6 **A.** We produced, I believe, a zipped folder containing  
7 spreadsheets of all the elections we analyzed in our  
8 analysis, both the racial demographics and the election  
9 results.

04:54:28

10 **Q.** And I'm not asking you precisely but, I mean, what is  
11 the volume of this file? Is it a small file? A large  
12 file?

13 **A.** I think in this case it was a fairly small file. It  
14 was easy to produce.

04:54:40

15 **Q.** Now, you had just asked for, and you are unfamiliar  
16 with, the methodology and the underlying data of the  
17 alleged ecological inference tables that were just shown  
18 to you. Do you recall that testimony?

19 **A.** Yes.

04:54:54

20 **Q.** Have you produced the methodology and underlying data  
21 for what you did?

22 **A.** Yes.

23 **Q.** Could any social scientist that's trained in this  
24 field take what you produced in this case and reproduce  
25 everything that's in your report?

04:55:04

1 **A.** There is no question. We put our eiCompare software  
2 on a public website for other people to download. Inside  
3 there we have what are called vignettes which explain with  
4 sample datasets exactly how to run the analyses that we  
04:55:24 5 produced. And the data we analyzed was all taken from the  
6 TLC website.

7 **Q.** So everything was there in terms of allowing another  
8 appropriate expert to replicate what you have done. Is  
9 that a fact?

04:55:39 10 **A.** Yes.

11 **Q.** Now, what did you get in return from the State's  
12 expert?

13 **A.** I received a short PDF report from Dr. John Alford.  
14 It contained no tables and contained no underlying data.  
04:56:01 15 There were references to ecological analysis in the text  
16 of a paragraph, but there were no charts or tables or no  
17 underlying data when I received the PDF.

18 **Q.** Did you at some point get some data associated with  
19 Dr. Alford's analysis?

04:56:19 20 **A.** Yes, a few days ago.

21 **Q.** Describe what that looked like compared to what you  
22 produced.

23 **A.** I received a single Excel file. I believe either you  
24 or Mr. Gaber forwarded it to me. I believe you had  
04:56:35 25 received it from the defense. It was a single Excel file

1 that was not labeled and had columns and then rows of VTDs  
2 of election analysis from one single primary election.

3 **Q.** Is that the only election data that was in that file?

4 **A.** Yes.

04:56:57

5 **Q.** Are you able to take that file, understand the  
6 methodology and replicate the regression or, excuse me,  
7 the ecological inference tables you were shown just  
8 moments ago?

04:57:14

9 **A.** They did not reveal any methodology or type of  
10 ecological regression they performed. I can take the  
11 data, read it into my program and I can attempt to  
12 approximate it; but there was no description at all of  
13 what methodology they used.

04:57:32

14 **Q.** And again, if you approximated it, would it have been  
15 for that one primary election?

04:57:50

16 **A.** For that single primary I believe the file that I  
17 received had only one election result. It didn't even  
18 have candidate names in it. Just candidate one, candidate  
19 two. So I didn't even know which primary or which  
20 election it was at the outset.

04:58:06

21 **Q.** And based on what you know at this moment and looking  
22 at those ecological inference tables you were shown that  
23 said "Attorney General's office" at the bottom, do you  
24 have concerns whether or not they are accurate enough for  
25 the Court to rely upon in its opinion?



1 **A.** I have serious concerns.

2 **Q.** What are some of those concerns?

3 **A.** I took the data. I believe another day later I was  
4 given information in a second dataset that contained the  
04:58:20 5 candidate names so that I could run the analysis. I  
6 replicated -- attempted to replicate the analysis and  
7 achieved very different results.

8 **Q.** What did you get in the second set or -- pardon me.  
9 When did you get the second bit of information you just  
04:58:40 10 described?

11 **A.** Over the weekend.

12 **Q.** And again, taking what was provided before, what you  
13 just described was provided over the weekend, can you --  
14 with those things together, do you have anywhere  
04:58:53 15 sufficient of what you need to replicate those ecological  
16 inference tables you have been shown?

17 **A.** No. There is -- in this book there were about 20  
18 election results, and I received one Excel file over the  
19 weekend that had one single primary.

04:59:09 20 And when I did attempt to replicate that, the analysis  
21 was quite different than what is printed in that book,  
22 which causes me to have serious concerns, as I said, about  
23 this printout.

24 **Q.** Now, transitioning to a different subject, you were  
04:59:27 25 shown a number of maps that showed partisan shading. Do

1 you recall that generally?

2 **A.** Yes.

3 **Q.** And it appeared to me -- correct me if I'm wrong --

4 but that the partisan shading maps look very similar to

04:59:39

5 the race shading maps that are in your report. Would you

6 agree with that?

7 **A.** They do.

8 **Q.** Why is that?

9 MR. HILTON: Your Honor, I object. It

04:59:46

10 mischaracterizes the exhibits. They show completely

11 different data, as we discussed with the witness. It

12 mischaracterizes his testimony, as well. And it's

13 leading. And I understand that it's redirect, and so I'm

14 trying to refrain from leading objections.

05:00:01

15 JUDGE GUADERRAMA: So the point is that is not

16 leading. That last question is not leading. I'll

17 overrule that objection.

18 As to the other, I'm going to overrule that as well

19 and let you answer.

05:00:11

20 THE WITNESS: Thank you, Your Honor.

21 **A.** While they show patterns, while one is shaded red and

22 blue and the other is shaded green and red, the maps are

23 shaded, regardless of what color, in very similar areas.

24 And that is precisely because of the point I have been

05:00:31

25 trying to make that Black and Hispanic voters are quite

1 cohesive in voting for Democratic candidates of choice.  
2 And Anglo voters are quite cohesive in voting for  
3 Republicans, voting against.

05:00:54

4 And so in areas that appear to be heavily minority in  
5 Tarrant County, they are also voting for Democratic  
6 candidates of choice. And so that's why just the image,  
7 if you put them next to each other, would look quite  
8 similar.

9 BY MR. DUNN:

05:01:07

10 **Q.** So if a person knows that voting is racially polarized  
11 in Tarrant County and they draw a map only using partisan  
12 shade maps, they can at the same time know that the cuts  
13 they are making are impacting minority citizens, Black and  
14 Latino and other?

05:01:22

15 **A.** There is no question --

16 MR. HILTON: Objection. Leading.

17 JUDGE GUADERRAMA: Sustained.

18 MR. HILTON: Calls for speculation.

19 JUDGE GUADERRAMA: Sustained.

20 MR. HILTON: Objection to --

21 JUDGE GUADERRAMA: Sustained.

22 MR. HILTON: Thank you.

23 MR. DUNN: Okay.

24 BY MR. DUNN:

05:01:30

25 **Q.** When a person knows that there is existence of

1 racially polarized voting in a jurisdiction in Tarrant  
2 County, what can they glean from a partisan shade map, if  
3 anything?

4 MR. HILTON: Objection. Calls for speculation.

05:01:42

5 JUDGE GUADERRAMA: Overruled.

6 **A.** There is no question that it is well-known that Black  
7 and Hispanic voters in Tarrant County vote heavily  
8 Democrat and that Anglo voters vote heavily Republican.

05:02:07

9 Those are the reports that they just presumably handed me  
10 that the Attorney General's office has run that state that  
11 90 percent of Blacks and 80 percent of Hispanics vote  
12 Democrat, but only 5 or 10 or 15 percent of Anglos do.

05:02:37

13 So in Texas, especially in some of these urban  
14 counties, it's easy to know when you see either the  
15 partisan shading what the underlying racial  
16 characteristics of that neighborhood are.

05:03:00

17 There are not consistent Anglo-majority neighborhoods  
18 that would be shaded in the darkest blue. There just are  
19 none. And there are not any majority Black and Hispanic  
20 neighborhoods that would be shaded dark red. There are  
21 none.

22 So when you know that information, you are able to  
23 understand the racial demographics when you know the  
24 partisan breakdown.

05:03:14

25 MR. DUNN: Nothing further.

1 JUDGE GUADERRAMA: Mr. Hilton.

2 MR. HILTON: Very briefly, Your Honor.

3 **RECROSS-EXAMINATION**

4 BY MR. HILTON:

05:03:28 5 **Q.** Prior to defendants' counsel receiving your rebuttal  
6 report, are you aware of whether any of plaintiffs'  
7 attorneys asked for any additional information from the  
8 State?

9 **A.** I don't know.

05:03:42 10 **Q.** Prior to receiving the information that you have  
11 discussed earlier from Dr. Alford, did you consider any  
12 primary elections at all?

13 **A.** I did not analyze primary elections in my initial  
14 report. I only analyzed them in response to Dr. Alford.

05:04:00 15 **Q.** So the answer to my question is yes? Prior to  
16 receiving the information from Dr. Alford, you didn't  
17 consider any primary elections?

18 **A.** I did not. Correct.

05:04:13 19 **Q.** And regardless of whether you can replicate these EI  
20 results or not, you never conducted any inquiry into  
21 primary elections on your own?

22 **A.** On my initial report, I did not.

23 **Q.** Okay. And your testimony is that any information  
24 there about whether Blacks and Hispanics or any other  
05:04:29 25 groups vote together in primary elections, that's

1 irrelevant to the question that you are here to answer?

2 That's your testimony?

3 **A.** In Senate District 10, correct.

4 MR. HILTON: Nothing further.

05:04:39

5 JUDGE GUADERRAMA: Mr. Dunn?

6 MR. DUNN: Nothing further, Your Honor.

7 JUDGE GUADERRAMA: Doctor, you may step down.

8 Thank you, sir.

9 THE WITNESS: Thank you. Thank you for the books

05:04:50

10 and for the report. It made my job easier. Thank you.

11 JUDGE SMITH: You are welcome.

12 JUDGE GUADERRAMA: Mr. Dunn, who is going to be

13 your next witness?

14 MR. DUNN: At this point we intend to offer the

05:05:02

15 videotaped deposition of Senator Kel Seliger. It's about

16 two hours, I think, just a little bit shy of that. And so

17 I am not sure if the Court wants to start with that now

18 and get a little bit out of the way and do some in the

19 morning.

05:05:17

20 What I can also add -- I should step up here. I beg

21 your pardon. What I can also add is that I think the

22 plaintiffs will finish tomorrow. It looks like we're on

23 track to do that, subject to the length of some of these

24 crosses.

05:05:30

25 JUDGE GUADERRAMA: Even if we break now, you'll

1 be able to finish tomorrow?

2 MR. DUNN: That's our best guess, without knowing  
3 how long the cross-examinations are.

05:05:40

4 JUDGE GUADERRAMA: Are you going to save any time  
5 for rebuttal?

6 MR. DUNN: We hope to, Judge. We expect to have  
7 a very short rebuttal, though.

8 JUDGE GUADERRAMA: It's up to you. It's your  
9 time. So if you want to break now, we can break now.

05:05:51

10 MR. DUNN: We're going to proceed to start  
11 playing now.

12 JUDGE GUADERRAMA: You are going to play the  
13 video?

14 MR. DUNN: Yes, sir.

05:06:03

15 JUDGE GUADERRAMA: Okay.

16 MR. DUNN: One final housekeeping matter. We  
17 expected the live witness to take through the end of the  
18 day. So I don't have the page and line of these cuts that  
19 I can call out as I did this morning. I will compile that  
20 and submit it to the reporter.

05:07:00

21 JUDGE GUADERRAMA: All right.

22 MR. DUNN: But this presentation includes both  
23 the State's cuts as well as the plaintiffs'.

05:07:13

24 JUDGE GUADERRAMA: Any objection from the  
25 defense?

1 MR. HILTON: To submitting the page and line cuts  
2 in the manner he described, no, Your Honor.

3 JUDGE GUADERRAMA: All right.

4 (Deposition of Senator Kel Seliger played, as  
05:07:19 5 follows:)

6 UNIDENTIFIED SPEAKER: Today is January 19th,  
7 2022 at 9:14 a.m. We are on the record. We are located  
8 at the offices of the Attorney General of Texas at 209  
9 West 14th Street, Austin, Texas.

05:07:42 10 This is the video deposition of Senator Kel Seliger in  
11 the matter of League of United Latin American Citizens, et  
12 al v. Greg Abbott, et al, Case Number 3:21-CV-00259.

13 **SENATOR KEL SELIGER,**

14 having been previously duly sworn, testified via  
15 videotape, as follows:

16 **EXAMINATION**

17 OFFERED BY MR. DUNN:

18 **Q.** Well, the preliminary injunction is challenging Senate  
19 District 10 and district -- the Texas Senate map passed on  
05:08:17 20 the third called session of the 87th Legislature.

21 Is that your understanding of what the Brooks  
22 plaintiffs are challenging?

23 **A.** Yes.

24 **Q.** All right. Now, I'll be referring today to the Senate  
05:08:27 25 map that was ultimately passed in the third called special



1 session of the 87th Legislature and signed by the  
2 Governor. I'll be referring to that map as either SD-4 or  
3 the Texas Senate map today.

4 **A.** Okay.

05:08:36

5 **Q.** Can we agree to use those terms today when referring  
6 to the Texas Senate map that includes SD-10, the district  
7 that's at issue in the Brooks litigation?

8 **A.** Yes.

05:08:46

9 **Q.** All right. Finally, your testimony today we may -- we  
10 may play this in court. Do you understand that?

11 **A.** Sure.

12 **Q.** And so do you understand that you are under oath and  
13 required to testify completely and truthfully? Right?

14 **A.** Yes.

05:08:53

15 **Q.** And you agree to do that today, right?

16 **A.** Yes.

17 **Q.** Let's go over a little bit of your background. So  
18 could you introduce yourself to the Judge?

19 **A.** Yeah. My name is Kel Seliger. I live in Amarillo.

05:09:06

20 And since 2004, I have represented the 31st Senatorial  
21 District, which is the Panhandle, part of the South  
22 Plains, and the Permian Basin.

23 And then in 2011, I chaired the Senate Committee on  
24 Redistricting.

05:09:27

25 **Q.** I'm going to go over briefly your educational

1 background. I understand from your profile online you  
2 matriculated at Dartmouth?

3 **A.** Correct.

4 **Q.** You got what degree from there?

05:09:38

5 **A.** Psychology and biology.

6 **Q.** Bachelor of?

7 **A.** Psychology and biology.

8 **Q.** Science?

9 **A.** Bachelor of Arts. They are all Bachelor of Arts.

05:09:46

10 **Q.** Gotcha. I'm handing you what I am marking as State  
11 Defendants' 1. Go ahead and take a look at that and let  
12 me know when you're finished.

13 **A.** Pretty much finished because I submitted it.

14 **Q.** Well, go ahead and take a look, and let's make sure.

05:10:33

15 **A.** Okay. Okay.

16 **Q.** What is that document?

17 **A.** This is the declaration or affidavit that I submitted  
18 as part of this lawsuit.

19 **Q.** And if you flip to the back page, Page 3, there's a  
20 signature. Are you familiar with that signature?

05:11:24

21 **A.** It is mine.

22 **Q.** Okay. So you submitted this declaration. Did you  
23 write it yourself?

24 **A.** I'm sorry?

05:11:33

25 **Q.** Did you write the declaration yourself?

1 **A.** I did not.

2 **Q.** Who wrote it?

3 **A.** I don't know who wrote it. It was given to me. I  
4 asked what Senator Powell wanted me to present, and this  
05:11:43 5 is what she gave me.

6 **Q.** Well, let's talk about that for a second. So you  
7 didn't have a hand in drafting this declaration?

8 **A.** I did not draft it.

9 **Q.** You said you received it from Senator Powell?

05:11:53 10 **A.** Uh-huh. Yeah.

11 **Q.** Do you know if Senator Powell wrote the declaration?

12 **A.** I couldn't begin to tell you.

13 **Q.** How did you come about getting a declaration from  
14 Senator Powell?

05:12:04 15 **A.** When she asked me if I would participate in some  
16 fashion on this suit when we were in special session on  
17 the floor. And I told her I wanted to read the lawsuit  
18 that was being filed, and I wanted to see what it was that  
19 she would like me to present. And this was it.

05:12:25 20 **Q.** Okay. So someone wrote this and handed it to you, and  
21 you signed it?

22 **A.** Senator Powell handed it to me, yes.

23 **Q.** How did she hand it to you?

24 **A.** That, I don't recall.

05:12:37 25 **Q.** Now, if we go to Paragraph 10 of your declaration.

1 **A.** Uh-huh.

2 **Q.** Do you see Paragraph 10?

3 **A.** I do.

4 **Q.** All right. Follow along with me. It says, "The 2021  
05:13:03 5 Senate redistricting process saw untrue pretextual  
6 explanations given for why the lines were drawn as they  
7 were."

8 Did I read that correctly?

9 **A.** Yes.

05:13:12 10 **Q.** Again, you didn't write that line?

11 **A.** No.

12 **Q.** What lines do you believe were drawn with untrue  
13 explanations?

14 **A.** Oh, the lines in Senate District 31.

05:13:21 15 **Q.** Are there any other Senate districts that you believe  
16 untrue explanations were given for why the lines were  
17 drawn the way that they were drawn?

18 **A.** Untrue? No.

19 **Q.** What about pretextual explanations? When you refer to  
05:13:38 20 pretextual explanations, which districts do you believe  
21 were drawn and pretextual explanations were given?

22 **A.** Only Senate --

23 MR. OPIELA: Objection. Form.

24 **A.** Only Senate District 31, that I know of.

05:13:56 25 OFFERED BY MR. DUNN:

1 Q. All right. The second line reads, "For example, I was  
2 told by Senator Huffman that my district was being changed  
3 to add many new counties around Midland --"

05:14:02 4 VIDEO REPORTER: I'm sorry. Wait a minute. Slow  
5 down for me. "That my district was being changed...."

6 OFFERED BY MR. DUNN:

7 Q. "-- to add many new counties around Midland and remove  
8 Panhandle counties in order to create distinctive  
9 agricultural versus oil and gas districts between SD-31  
05:14:17 10 and SD-28."

11 Did I read that correctly?

12 A. Yes.

13 Q. All right. That's an example that you give as an  
14 untrue explanation; is that right?

05:14:25 15 A. Yes.

16 Q. All right. What is untrue about that explanation?

17 A. Because it doesn't do that, as a matter of fact. It  
18 excises four counties in the Panhandle and places four  
19 counties down in the southern part of the district, and it  
05:14:41 20 doesn't necessarily create that division.

21 Gray County is one of the districts that was excised  
22 from the district which has been a large gas-producing  
23 county for a long time. Why take that out?

24 At the same time, there is a good deal of  
05:14:55 25 agricultural, primarily ranching, in the southern part of

1 the district.

2 And so those divisions, it is a diverse economy; and  
3 it's both agricultural and oil and gas. And these changes  
4 did not really have that effect at all.

05:15:09

5 **Q.** Now, you go on to say in Paragraph 10, "As I have  
6 explained on the Senate floor, the plan does not create  
7 distinctive agricultural and oil and gas districts."

8 Did I read that correctly?

9 **A.** Yes, you did.

05:15:22

10 **Q.** And I think that that's what you are explaining there?

11 **A.** Yes.

12 **Q.** "Instead, it was obvious that the purpose of these  
13 changes was to benefit a potential Republican primary  
14 challenger from Midland preferred by the Lieutenant  
15 Governor."

05:15:32

16 Did I read that correctly?

17 **A.** Yes, you did.

18 **Q.** All right. Tell me about that.

19 MR. OPIELA: Objection. Form.

05:15:39

20 **A.** I think that is why it was done, and I think that was  
21 the motivation. It was clear that the Lieutenant Governor  
22 wanted the candidate from Midland to compete successfully,  
23 and that's why this was done.

24 OFFERED BY MR. DUNN:

05:15:51

25 **Q.** The Republican primary challenger?

1 **A.** Yes.

2 **Q.** Why do you think that Senator Huffman was trying to  
3 strengthen the Republican primary challenger against you?

4 **A.** Probably because she was told to by the Lieutenant  
5 Governor.

05:16:01

6 (Video deposition of Senator Kel Seliger paused.)

7 MR. DUNN: Your Honors, just to let you know, the  
8 exhibit they are referring to as his declaration is Brooks  
9 Exhibit 1, if you want to look at the paper copy.

05:16:16

10 (Video deposition of Senator Kel Seliger continued, as  
11 follows:)

12 OFFERED BY MR. DUNN:

13 **Q.** Did you have any nonpublic conversations about the  
14 redistricting process with any of the committee members  
15 for the Senate Redistricting Committee in 2021?

05:16:26

16 **A.** Not that I recall. There's a lot of them and we have  
17 a lot of interaction but not that I recall.

18 **Q.** Well, I'll go through them in a minute; but I'm just  
19 trying to figure out here what the scope of your knowledge  
20 is on this.

05:16:44

21 **A.** Okay.

22 **Q.** So you did have discussions with Senator Huffman; but  
23 again, you would object to talking about those based on  
24 legislative privilege, right?

05:16:56

25 **A.** Uh-huh.

1 Q. All right. So you claim that Senator Huffman's  
2 reasons were pretextual. Is there any public information  
3 that you can point to that demonstrates that Senator  
4 Huffman drew Senate District 31 based on pretextual  
05:17:12 5 reasons?

6 A. No.

7 Q. Is there any information in the public record that  
8 demonstrates that Senator Huffman drew Senate District 31  
9 for untrue reasons?

05:17:22 10 A. I don't quite understand what you mean by "untrue." I  
11 think they're specious.

12 Q. Well, so let's go back to your declaration,  
13 Paragraph 10. You said, "The 2021 Senate redistricting  
14 process saw untrue explanations given for why the lines  
05:17:41 15 were drawn as they were."

16 Did I read that correctly?

17 A. Yes, you did. So, yeah, I did say "untrue."

18 Q. You did. And so that's why I'm asking.

19 A. Okay.

05:17:50 20 Q. Did you find -- can you point to any public  
21 information or public statements that would demonstrate  
22 untrue reasons why Senate District 31 was drawn the way  
23 that it was drawn?

24 A. No.

05:18:01 25 Q. Can you point to anything in the public record



1 demonstrating untrue reasons for why Senate District 10  
2 was drawn the way that it was drawn?

3 **A.** No.

4 **Q.** Can you point to anything in the public record  
05:18:13 5 demonstrating that pretextual explanations were given for  
6 why Senate District 10 was drawn the way that it was  
7 drawn?

8 **A.** Anything in the public record?

9 **Q.** Yes.

05:18:21 10 **A.** No.

11 **Q.** I'm going to show you what I'm marking as Exhibit 2.

12 **A.** Okay.

13 **Q.** Have you ever seen that document before?

14 **A.** I have.

05:20:05 15 **Q.** What is it?

16 **A.** It's the map under SB-4.

17 **Q.** Is that a true and accurate copy of the map that was  
18 adopted through the enrolled and signed SB-4?

19 **A.** I believe it is. I'll trust you on this.

05:20:21 20 **Q.** Okay. You don't have any reason to dispute that this  
21 is the final copy?

22 **A.** No. No.

23 **Q.** Okay. Now, you see up there in the top left-hand  
24 corner of the state of Texas, that's Senate District 31;

05:20:33 25 is that correct?

1 **A.** Yes.

2 **Q.** All right. And that is the district that you are  
3 currently representing in the Texas Senate?

4 **A.** Correct.

05:20:38 5 **Q.** And then to the right of that is a gray area that's  
6 demarcated as Senate District 28; is that right?

7 **A.** Right.

8 **Q.** And then within Senate -- or adjacent to Senate  
9 District 28 we have one, two, three, four, five, six,  
05:20:53 10 seven, eight counties that comprise Senate District 10?

11 **A.** Right.

12 **Q.** Is that right?

13 **A.** Yes.

14 **Q.** All right. And again, looking at this map, there's no  
05:21:03 15 way to look at this map and determine that untrue reasons  
16 were given for why this map was drawn this way, right?

17 **A.** Not by looking at the map.

18 **Q.** Okay. There's no way to look at this map and  
19 determine that pretextual reasons were given for why the  
05:21:19 20 map was drawn this way; is that right?

21 **A.** No.

22 **Q.** I'm going to hand you what I'm marking as  
23 Defendants' 3. Have you ever seen Exhibit 3 before?

24 **A.** No.

05:22:27 25 **Q.** Well, I'll represent to you that it's a copy of the

1 *Senate Journal* for the fourth day, Monday, October 4,  
2 2021. Do you have any reason to dispute that?

3 **A.** None at all.

4 **Q.** I'll represent to you that that came directly from the  
5 *Senate Journal*. So if there is any dispute about that,  
6 you let me know.

7 **A.** Right.

8 **Q.** If you'll flip to Page 62 for me. Actually, go back  
9 one page. Let's go to the front real quick. Go back to  
10 the first page.

11 **A.** Okay.

12 **Q.** So do you see there at the bottom it says "Committee  
13 Substitute Senate Bill 4 on third reading"?

14 **A.** Yes.

15 **Q.** Can you explain to the judges what that means?

16 **A.** Each bill must be read three times. Once when it's  
17 read and submitted to committee. And then once when it's  
18 submitted for passage on the Senate. And then it must be  
19 passed a third time, generally after a day.

20 **Q.** So this represents the third and final passage out of  
21 the Senate?

22 **A.** It does.

23 **Q.** If you'll flip over to Page 62.

24 **A.** Okay.

25 **Q.** It says at the top, "The bill was read third time and

1 was finally passed by the following vote: Yeas 20.

2 Nays 11." Did I read that correctly?

3 **A.** Yes.

4 **Q.** And you were among the nays; is that correct?

05:24:03

5 **A.** Correct.

6 **Q.** Now, some of your colleagues submitted a reason for  
7 vote; is that right?

8 **A.** Uh-huh. Yes.

05:24:12

9 **Q.** Could you explain to the judge what a "reason for  
10 vote" is in Senate nomenclature?

11 **A.** On any vote any member may submit comments on why they  
12 voted for or against a bill. It's not part of the debate,  
13 and everyone has that privilege.

05:24:35

14 **Q.** Now, there on Page 62 we see that reason for vote was  
15 offered by Senator Eckhardt; is that right?

16 **A.** Yes.

17 **Q.** And if we go to Page 63, the second full paragraph  
18 that starts "the author," do you see that?

19 **A.** Yes.

05:24:54

20 **Q.** It reads, "The author of CSSB-4 (Plan 2130) has  
21 claimed color blindness to race"; is that right?

22 **A.** Yes.

23 **Q.** So the authors of SB-4 claim that they were  
24 color-blind in drawing the map lines; is that right?

05:25:11

25 **A.** Yes.

1 Q. And there's nothing in the public record, to your  
2 knowledge, that demonstrates anything but color blindness,  
3 right?

4 A. Correct.

05:25:18

5 Q. In fact, you're not here to testify today about any  
6 public record of intentional discrimination in the map  
7 drawing, right?

8 A. No.

05:25:33

9 Q. Now, you did not sign on to Senator Eckhardt's reason  
10 for vote; is that right?

11 A. Correct.

12 Q. If we flip over to Page 64, the third full sentence  
13 starts "specifically." Do you see that?

14 A. The third full -- 60--what now?

05:25:49

15 Q. We're on Page 64, the third full sentence.

16 A. Okay. I apologize. Where it says "specifically."  
17 Okay.

05:26:32

18 Q. Now, Senator Eckhardt says, "Specifically, CSSB-4's  
19 author listed their goals and priorities in the following  
20 order: Abiding by all applicable law, equalizing  
21 population across districts, preserving political  
22 subdivisions and communities of interest wherever  
23 possible, preserving the cores of previous districts to  
24 the extent possible, avoiding pairing incumbent members,  
05:27:05 25 achieving geographic compactness when possible, and

1 accommodating incumbent priorities when possible."

2 Did I read that correctly?

3 **A.** Yes.

05:27:13

4 **Q.** All right. And you would agree that all of those  
5 reasons were given in support of passage of SB-4, right?

6 **A.** Yes.

7 **Q.** And again, to go through them, you agree that the  
8 Republican members offered as a reason for passing SB-4  
9 abiding by all applicable law, right?

05:27:29

10 **A.** Yes.

11 **Q.** And they offered equalizing population across  
12 districts, right?

13 **A.** Yes.

05:27:36

14 **Q.** And they offered preserving political subdivisions,  
15 right?

16 **A.** It says that. I don't believe it.

17 **Q.** And they offered preserving communities of interest  
18 wherever possible, right?

19 **A.** It says that. I don't believe it.

05:27:45

20 **Q.** And they offered preserving the cores of previous  
21 districts, right?

22 **A.** It says that. I don't believe it.

23 **Q.** And they offered, to the extent possible, avoiding  
24 pairing incumbent members, right?

05:27:56

25 **A.** I believe that is true.

1 Q. And they offered achieving geographic compactness when  
2 possible, right?

3 A. It says that. I don't believe it.

05:28:06

4 Q. And they offered accommodating incumbent priorities  
5 when possible, right?

6 A. It says that, and they did not.

05:28:17

7 Q. Now, you identified four of these that you don't  
8 believe; but again, you can't point to anything in the  
9 public record suggesting that these reasons were untrue,  
10 right?

11 A. No.

12 Q. And you can't point to anything in the public record  
13 suggesting that these reasons were pretextual, right?

14 A. No.

05:28:27

15 Q. Now, you also knew that partisanship was a factor  
16 driving the new Senate map, right?

17 A. Absolutely.

18 Q. What role did partisanship play in driving -- well,  
19 I'm trying to avoid stepping on legislative privilege.

05:28:38

20 A. Okay.

21 Q. So let me rephrase.

22 A. Please do. I don't want him kicking me under the  
23 table.

24 Q. Sure. All right. Let's go to the bottom of Page 64.

05:28:50

25 A. Okay.

1 Q. Do you see at the bottom of it says "reason for vote";  
2 and this is for Senator Johnson?

3 A. Yes.

05:29:25

4 Q. Now, on the next page it reads, "The proposed maps  
5 under CSSB-4, which is SB-4, do exactly what they are  
6 expected to do. They make districts more partisan; and,  
7 if not invalidated by a Court challenge, they effectively  
8 eliminate a Democratic seat."

9 Did I read that correctly?

05:29:44

10 A. Yes.

11 Q. Now, one of the goals of Republican members was to  
12 benefit Republicans, right?

13 A. Correct.

05:29:52

14 Q. All right. So losing a Democratic seat is the result  
15 of partisanship in the map, right?

16 A. True.

17 Q. If you go down that page on 65, it has "reason for  
18 vote" and that includes Senators Alvarado, Blanco,  
19 Eckhardt, Gutierrez, Hinojosa, Johnson, Lucio, Menendez,  
20 Miles, Powell, West, Whitmire and Zaffirini; is that  
21 right?

05:30:15

22 A. Correct.

23 Q. Now, I'll represent to you that I didn't see any other  
24 reason for vote in the *Senate Journal* that named you as  
25 giving a reason for vote on SB-4.

05:30:31



1 **A.** Correct.

2 **Q.** All right. So you didn't join in any of the reasons  
3 given by any of the Democratic members for voting against  
4 SB-4, right?

05:30:41 5 **A.** I did not.

6 **Q.** All right. So you disagree with them when, for  
7 instance, they refer to intentional discrimination as a  
8 basis for drawing SB-4, right?

05:30:55 9 **A.** I don't necessarily disagree at all. If you'll ask  
10 the question again.

11 **Q.** Did you not understand the question?

12 **A.** Well, I thought I did; but now we've gone so long, I'm  
13 not sure.

14 **Q.** Let me ask it like this.

05:31:35 15 **A.** Okay.

16 **Q.** You didn't join in any reason for vote for any of the  
17 members who gave a reason for vote in voting against SB-4,  
18 right?

19 MR. DUNN: Objection to form. You can answer.

05:31:49 20 **A.** I did not.

21 OFFERED BY MR. DUNN:

22 **Q.** You weren't on the redistricting committee for the  
23 2021 session, right?

24 **A.** Correct.

05:32:13 25 **Q.** And when I refer to the 2021 session, you understand

1 I'm referring to the 87th Legislature?

2 **A.** Yes.

3 **Q.** I'm sorry. I'm not trying to be pedantic. I just  
4 want to make sure that the judge understands -- the judges  
05:32:24 5 understand we're talking about the same thing.

6 **A.** We can be specific in that it was the third special  
7 session.

8 **Q.** Okay. So Senator Joan Huffman was the chair in the  
9 third called session of the redistricting committee?

05:32:34 10 **A.** Yes.

11 **Q.** And Juan "Chuy" Hinojosa was the Vice-Chair, right?

12 **A.** Yes.

13 **Q.** All right. Did you have any public conversations with  
14 Senator Hinojosa about the reasons why SB-4 was drawn the  
05:32:46 15 way it was?

16 **A.** Not that I recall, no.

17 **Q.** Same question but for Carol Alvarado?

18 **A.** Not that I recall, no.

19 **Q.** Same question but for Paul Bettencourt?

05:32:55 20 **A.** No.

21 **Q.** Did you have any public conversations with Brian  
22 Birdwell that discussed the reasons why SB-4 was drawn the  
23 way it was?

24 **A.** No.

05:33:05 25 **Q.** What about with Donna Campbell?

1 **A.** No.

2 **Q.** Did you have any with Kelly Hancock?

3 **A.** No.

4 **Q.** Did you have any conversations with Bryan Hughes about  
05:33:15 5 why SB-4 was drawn the way it was?

6 **A.** No.

7 **Q.** What about Eddie Lucio, Jr.?

8 **A.** No.

9 **Q.** What about Robert Nichols?

05:33:21 10 **A.** No.

11 **Q.** The same question but Angela Paxton?

12 **A.** No.

13 **Q.** Did you have any conversations with Charles Perry  
14 about why SB-4 was drawn the way it was drawn?

05:33:33 15 MR. OPIELA: Objection. Objection. Form. You  
16 were asking -- I think it's potentially confusing. Can  
17 you restate it?

18 OFFERED BY MR. DUNN:

19 **Q.** Sure. Did you have any public conversations with  
05:33:42 20 Angela Paxton about why SB-4 was drawn the way it was  
21 drawn?

22 **A.** Would you define "public conversations"?

23 **Q.** Anything on the public record.

24 **A.** No.

05:33:51 25 **Q.** Okay. Did you have any public conversations with

1 Charles Perry about why SB-4 was drawn the way it was  
2 drawn?

3 **A.** No.

4 **Q.** The same question but for Royce West?

05:34:01

5 **A.** No.

6 **Q.** The same question but for John Whitmire?

7 **A.** No.

8 **Q.** Finally, with Judith Zaffirini did you have any public  
9 conversations concerning why SB-4 was drawn the way it was  
10 drawn?

05:34:14

11 **A.** No.

12 **Q.** In fact, any conversations you had would be subject to  
13 legislative privilege; would you agree?

14 **A.** I would, yes.

05:34:20

15 **Q.** Did you have any -- do you know who Senator Huffman's  
16 staff was?

17 **A.** Yes. Sean Opperman was the committee director.

18 **Q.** All right. Are you familiar with a person by the name  
19 of Anna Mackin?

05:34:34

20 **A.** I might have met her as a member of staff, but I don't  
21 recall.

22 **Q.** Okay. As you sit here right now, you don't recall  
23 having any specific conversations with Anna Mackin about  
24 redistricting?

05:34:50

25 **A.** No.

1 Q. The same question but for Sean Opperman?

2 A. Yes.

3 Q. And, yes, you do recall or, no, you don't recall?

4 A. Yes, I do recall.

05:34:58 5 Q. Okay. Were you personally involved in any of the map  
6 drawing with Senator Huffman?

7 A. Early on I submitted a map.

8 Q. All right. Let's -- you can go ahead and put that  
9 down for a second.

05:35:13 10 A. Okay.

11 Q. I'm going to hand you what I'm going to mark as  
12 Defendants' 4. Have you ever seen that document before?

13 A. No.

14 Q. Well, I'll represent to you -- if you take a look in  
05:36:17 15 the bottom right-hand corner of Exhibit 4 that I've just  
16 handed you, are you familiar with that little capitol  
17 inside the circle?

18 A. I've seen it before, yes.

19 Q. Okay. Well, I'll represent to you that that's the  
05:36:33 20 Texas Legislative Council's symbol marked on the bottom  
21 right-hand corner. Do you have any reason to dispute  
22 that?

23 A. No. No.

24 Q. I'll also represent to you that I pulled this from the  
05:36:41 25 Texas Legislative Council's website. It concerns

1 redistricting dates of interest. Do you see that here?

2 **A.** I do.

3 **Q.** Now, I understand that you worked as a committee  
4 member for redistricting in the past; is that right?

05:36:53 5 **A.** I was committee member and chair.

6 **Q.** So take a look at these dates. Do you have any reason  
7 to disagree that this would have been the normal course  
8 had the census data come in timely to the Texas  
9 Legislature?

05:37:09 10 **A.** Yes, I believe it is.

11 **Q.** Believe it is what?

12 **A.** I believe it is the map that any normal session with a  
13 normal report by the Census Bureau, this would be the  
14 schedule.

05:37:19 15 **Q.** In fact, you know, having been a former chair and a  
16 member of the redistricting committee, you are aware that  
17 the U.S. Census Bureau had an obligation to publish  
18 redistricting data no later than April 1 of 2021, right?

19 **A.** That is my understanding.

05:37:32 20 **Q.** And, in fact, that didn't happen in 2021; is that  
21 right?

22 **A.** Correct.

23 **Q.** Now, you are aware that in the past redistricting  
24 cycles, the census data was released in time for the Texas  
05:37:42 25 Legislature to take the matter during the regular session,

1 right?

2 **A.** Yes.

3 **Q.** And you are also aware that the U.S. Census Data had  
4 -- had it been published on time in 2021, the Texas  
05:37:53 5 Legislature would have been able to address redistricting  
6 before the 87th Regular Session adjourned, right?

7 **A.** Yes.

8 VIDEO REPORTER: I'm sorry. Before the 87th...

9 MR. HILTON: Regular session adjourned.

05:37:57 10 OFFERED BY MR. DUNN:

11 **Q.** You would also agree that the U.S. Census Bureau did  
12 not release the census data on time in 2021, right?

13 **A.** Yes.

14 **Q.** And the census data was, instead, delayed due to the  
05:38:18 15 COVID-19 pandemic, right?

16 **A.** That's what they told us.

17 **Q.** You don't have any reason to dispute the Census  
18 Bureau's statement that the census data was delayed due to  
19 the COVID-19 pandemic?

05:38:36 20 **A.** No.

21 **Q.** All right. The Census Bureau did not release  
22 preliminary data until August 12 of 2021; is that right?

23 **A.** That is my understanding.

24 **Q.** All right. And, in fact, the Census Bureau did not  
05:38:48 25 deliver the full redistricting tool kit until September 16

1 of '21; is that right?

2 **A.** Once again, that's my understanding.

3 **Q.** That's roughly a five-month delay from what is set out  
4 in the redistricting dates of interest in Exhibit 4; is  
05:39:02 5 that right?

6 **A.** Right.

7 **Q.** And for this reason, the Legislature did not have the  
8 opportunity to conduct redistricting during the regular  
9 session; is that right?

05:39:08 10 **A.** That is correct.

11 **Q.** And the Governor, instead, called a special session,  
12 right?

13 **A.** Yes.

14 **Q.** In fact, he called three?

05:39:13 15 **A.** Yes.

16 **Q.** One of the purposes of the third special session was  
17 to enact new legislative maps; is that right?

18 **A.** Correct.

19 **Q.** And the special session only convenes for 30 days; is  
05:39:23 20 that right?

21 **A.** Yes.

22 **Q.** Now, 30 days is significantly shorter than a regular  
23 legislative session; is that right?

24 **A.** Yes.

05:39:30 25 **Q.** How much shorter?



1 **A.** Regular session is 140 days. Special session is 30  
2 days. It can be called only when a legislature is not in  
3 a regular session. The Governor can call as many special  
4 sessions as he would like.

05:39:46

5 **Q.** Okay. I'm going to hand you what I'm going to mark as  
6 Defendants' Exhibit Number 5. Have you ever seen  
7 Exhibit 5 before?

8 **A.** Yes.

9 **Q.** What is Exhibit 5?

05:40:20

10 **A.** It's a text of -- I guess it was a text or an e-mail  
11 sent to me by Senator Powell.

12 **Q.** And there in the middle of the page it says "from  
13 Beverly Powell"; is that right?

14 **A.** Yes.

05:40:33

15 **Q.** And the date was November 16th, 2021; is that right?

16 **A.** Yes.

17 **Q.** And it says "to KelSeliger@iCloud.com"; is that right?

18 **A.** Yes.

19 **Q.** The subject is "follow-up," right?

05:40:45

20 **A.** Yes.

21 **Q.** And it says, "Kel, thank you for visiting with me  
22 yesterday. Attached is the draft document. Looking  
23 forward to seeing you tomorrow evening in Waco"?

24 **A.** Right.

05:40:54

25 **Q.** Okay. So, first off, I understand that that e-mail

1 came with a draft declaration attached to it; is that  
2 right?

3 **A.** That is my memory of it, yes.

05:41:07

4 **Q.** So the declaration that she sent you is also the  
5 declaration that you signed, right?

6 **A.** Yes.

7 **Q.** And that's Defendants' 1; is that right?

8 **A.** Correct.

05:41:18

9 **Q.** And it looks like, if we look at Page 3 of Exhibit 1,  
10 you signed it on November 17th of 2021; is that right?

11 **A.** I'm having trouble finding the page, but I believe  
12 that's correct.

13 **Q.** It should be the last page of Defendants' 1.

14 **A.** Let me go back and find Defendants' 1.

05:41:48

15 **Q.** Now, Senator, if you lost that exhibit, the court  
16 reporter can be mad at you, not me.

17 **A.** That's why I found it so promptly. Yes,  
18 November 17th.

05:42:07

19 **Q.** All right. So the day after you received the  
20 declaration, you signed it, right?

21 **A.** Yes.

22 **Q.** What did you do with it?

23 **A.** I assume submitted it back to Senator Powell, but I  
24 don't recall.

05:42:20

25 **Q.** Have you had any conversations with any of the

1 plaintiffs from the Brooks case?

2 **A.** No. Only Senator Powell.

3 **Q.** Only Senator Powell?

4 **A.** Yes.

05:42:30 5 **Q.** Have you had any conversations with counsel for any of  
6 the Brooks plaintiffs?

7 **A.** No.

8 **Q.** Have you had any conversations with anyone about the  
9 declaration, aside from Senator Powell or with me here

05:42:42 10 today?

11 **A.** My chief of staff.

12 **Q.** Is your chief of staff an attorney?

13 **A.** No.

14 **Q.** Obviously, he works in your Senate office?

05:42:55 15 **A.** Yes.

16 **Q.** And what is your chief of staff's name?

17 **A.** Her name is Johanna Kim.

18 **Q.** Now, let's go over your declaration in a little bit  
19 more detail. I know we have already covered --

05:43:07 20 **A.** Okay.

21 **Q.** -- Paragraph 10, but I want to go through the  
22 declaration itself.

23 **A.** Okay.

24 **Q.** Now, again, you didn't write this yourself, right?

05:43:16 25 **A.** No.

1 Q. This was handed to you by Beverly Powell; and the day  
2 after she handed it to you, you signed it, right?

3 A. Yes.

05:43:23

4 Q. And your testimony today for the judges is you don't  
5 know what you did with this declaration after you signed  
6 it?

7 A. No.

05:43:35

8 Q. Now, let's go ahead and go to Paragraph 2 of your  
9 declaration. It says you're the incumbent Republican  
10 state senator representing District 31 in Texas Senate. I  
11 have held this position since 2004. Is that right?

12 A. Yes.

05:43:49

13 Q. Now, when Beverly Powell was talking to you about  
14 signing a declaration for her or asking you how you could  
15 help, do you know if she sent declarations like this to  
16 anybody else?

17 A. I have no idea.

18 Q. Did she tell you that she was going to send you a  
19 declaration?

05:43:58

20 A. Yes. Or I asked for it. One of the two.

21 Q. And before we get much deeper in this, let me go back  
22 because I forgot to ask on Defendants' 5 --

23 A. Uh-huh.

05:44:17

24 Q. -- she wrote, "Looking forward to seeing you tomorrow  
25 evening in Waco."

1 What was happening in Waco on November 17th?

2 **A.** I was a master of ceremonies at a dinner that was  
3 partially sponsored by Texas Pastors for Children, and  
4 Senator Powell was receiving an award.

05:44:34

5 **Q.** Would it be fair to say that you're friendly with  
6 Senator Powell?

7 **A.** Yes.

8 **Q.** And you don't recall if you handed this declaration  
9 back to her in Waco on the 17th, right?

05:44:48

10 **A.** No, I don't.

11 **Q.** Do you have any idea why you weren't on the  
12 redistricting committee in the 87th Legislature?

13 MR. OPIELA: Objection. Form.

14 **A.** I have an opinion. But do I know? No.

05:45:07

15 OFFERED BY MR. DUNN:

16 **Q.** What is your opinion?

17 **A.** Can I say? After 2019, I was named to no other  
18 committees or interest areas nor anything else.

05:45:31

19 **Q.** Now, Paragraphs 5, 6, 7 and 8 talk about litigation  
20 related to 2011 and 2013 redistricting; is that right?

21 **A.** Correct.

22 **Q.** I'm going to ask you this because this case involves  
23 allegations of intentional discrimination. So please  
24 don't take it as an insult that I'm asking you. I kind of  
05:45:49 25 have to.

1 **A.** I understand.

2 **Q.** You are not a racist, right?

3 **A.** No.

05:45:54

4 **Q.** When you were on the redistricting committee, you  
5 didn't draw maps because you disliked Black people, right?

6 **A.** Certainly not.

7 **Q.** You didn't draw maps because you disliked Hispanic  
8 people, right?

9 **A.** Certainly not.

05:46:04

10 **Q.** You weren't trying to disadvantage minority groups,  
11 right?

12 **A.** Absolutely not.

05:46:17

13 **Q.** You're not aware, as you sit here today, of any racial  
14 animus by the 87th Legislature's redistricting committee,  
15 right?

16 **A.** No.

05:46:35

17 **Q.** Paragraph 11 talks about your experience on the Senate  
18 redistricting committee, and you write that Senate  
19 District 10 was compact and wholly contained within  
20 Tarrant County and had close to ideal population; is that  
21 right?

22 **A.** To the best of my recollection, yes.

05:46:46

23 **Q.** Okay. As you were reading this declaration and  
24 ultimately before you signed it, did you go back and look  
25 at any of the data or maps from the 2011 or 2013

1 redistricting to refresh your recollection about whether  
2 that was true?

3 **A.** I did not.

05:47:00

4 **Q.** So when you read that and signed it, you were going  
5 based on your recollection just cold?

6 **A.** Yes.

05:47:17

7 **Q.** Okay. Now, I want to clarify for the record. I know  
8 we touched on it a little bit earlier. But with Senate  
9 District 31, you're familiar with how that was drawn in  
10 SB-4, right?

11 **A.** Yes.

12 **Q.** SD-10, were you as intimately involved in the drawing  
13 of SD-10 as you were SD-34 -- or SD-31?

14 **A.** Not at all in 2021.

05:47:45

15 **Q.** Let me ask it like this: Is there any non-privileged  
16 information that you can provide about how SD-10 was drawn  
17 during the 87th Legislature in either the regular session  
18 or any of the special sessions?

05:48:00

19 **A.** It was drawn very specifically to ensure that it would  
20 be represented by a Republican.

21 **Q.** So partisan reasons?

22 **A.** Yes.

05:48:15

23 **Q.** Is there any information that is either missing or  
24 that you believe should have been added to this  
25 declaration before you signed it, having now read it and

1 had it since November of 2021?

2 **A.** I don't think so.

3 **Q.** Aside from your chief of staff and Beverly Powell --  
4 and I might have asked this, but I'm going to ask it again  
05:48:39 5 just to make sure I didn't miss it -- is there anybody  
6 else that you talked to about this declaration before you  
7 signed it?

8 **A.** No.

9 **Q.** Is there anybody that you have talked to, other than  
05:48:50 10 your chief of staff and Beverly Powell, since you signed  
11 it, excluding your counsel?

12 **A.** No.

13 **Q.** Before I move off of your declaration --

14 **A.** Okay.

05:49:32 15 **Q.** -- I'm going to hand you what I'm going to mark as  
16 Defendants' 6. So I'll just represent to you that that's  
17 a printout of the declaration that was attached as an  
18 exhibit that your counsel sent me in response to the  
19 subpoena duces tecum.

05:50:02 20 **A.** Okay.

21 **Q.** Do you have any reason to dispute that?

22 **A.** I do not.

23 **Q.** As you look at that declaration that I handed you, if  
24 you go back to Page 3, you'll see that Page 3 has no  
05:50:14 25 signature and no date, right?



1 **A.** Correct.

2 **Q.** Did you have the opportunity, if you wanted to, to  
3 make amendments to this declaration before you signed it  
4 and dated it?

05:50:25 5 **A.** Yes.

6 **Q.** And you chose not to do so, right?

7 **A.** Correct.

8 **Q.** Now, I believe you mentioned earlier ago -- and I  
9 didn't really discuss that, but I want to go back to it.

05:50:37 10 You said you had been removed from all your committee  
11 chairs in 2019; is that right?

12 **A.** Correct.

13 **Q.** What is your opinion about why that happened?

14 **A.** I was removed from -- as a chair and member of the  
05:51:26 15 higher education committee, removed from the education --  
16 public education committee and removed from finance  
17 because I voted against two of the Lieutenant Governor's  
18 30 priorities.

19 **Q.** Well, you'd agree with me that you've been losing  
05:51:47 20 favor in Republican circles in Texas since at least 2019,  
21 right?

22 **A.** I don't know how much Republican circles. I don't  
23 know exactly what that means.

24 **Q.** How about the Republican Party in Texas?

05:52:08 25 **A.** I've had so little interaction with the Republican

1 Party that I wouldn't know. I assume among some members,  
2 yeah. Certainly losing favor with Lieutenant Governor,  
3 yes; but that's easy to do.

05:52:27

4 **Q.** I'm going to hand you what I'm marking as Plaintiffs'  
5 7 -- or excuse me, Defendants' 7.

6 **A.** Okay.

7 **Q.** Now, you'll see that the cover page there references  
8 Exhibit 21. I'll just represent to you that I'm marking  
9 this as Exhibit 7 for purposes of your deposition.

05:52:36

10 **A.** Okay.

11 **Q.** But this is -- actually, do you have another copy?

12 **A.** I do.

05:52:47

13 **Q.** This is actually Exhibit 21 from the response to the  
14 preliminary injunction that's been filed by the Brooks  
15 plaintiffs.

16 **A.** Okay.

17 **Q.** Go ahead and take a look at that and let me know when  
18 you are finished.

19 **A.** Oh, I'm very familiar with it. I'm finished.

05:52:54

20 **Q.** Can you tell me what this is?

21 **A.** It is an article from *The Texas Tribune*.

05:53:17

22 **Q.** All right. So in 2019 *The Texas Tribune* put out this  
23 article that's titled "Lieutenant Governor Dan Patrick  
24 pulls Senator Kel Seliger's chairmanship after Seliger  
25 suggested Patrick's aide kiss his, quote/unquote, back

1 end."

2 Did I read that correct?

3 **A.** That's correct.

4 **Q.** All right. What is the substance of this article?

05:53:25 5 **A.** The subject of the article is the fact that I had been  
6 removed from the committees mentioned before and named  
7 chairman of the agricultural committee. In an interview I  
8 was asked for my opinion, and I said I did not get the  
9 committees that I had asked for or desired, but I thought  
05:53:46 10 that the agricultural committee was a particularly  
11 important one, particularly for my district. At that  
12 point, the --

13 THE WITNESS: Are you --

14 MR. OPIELA: No.

05:53:59 15 **A.** Okay. At that point, the Lieutenant Governor's policy  
16 advisor said, "If Senator Seliger doesn't like his  
17 committee assignments or chairmanship, we can put him  
18 somewhere else."

19 I didn't say anything derogatory about that committee  
05:54:17 20 or that appointment. And that's at the point that I said  
21 she could consider attaching her lips to my back end,  
22 which is a phrase we don't use in West Texas because  
23 normally we would say she can kiss my ass.

24 The Lieutenant Governor said then that it was lewd,  
05:54:35 25 called me up after a few days, and told me I was then

1 removed as chairman of the ag committee, saying those  
2 remarks were lewd.

3 While they may have been somewhat indelicate, they  
4 were not lewd. Let's talk about my back end, not hers.

05:54:52

5 And I think that referring to them as lewd I think shows a  
6 little bit of hysteria and priggishness on the part of the  
7 Lieutenant Governor.

8 VIDEO REPORTER: All right. Hysteria and...

9 THE WITNESS: Priggishness. P-r-i-g-g.

05:55:15

10 OFFERED BY MR. DUNN:

11 **Q.** Is it fair to say that you and the Lieutenant Governor  
12 were not getting along around the time this article came  
13 out and thereafter?

14 **A.** We're not close.

05:55:23

15 **Q.** Now, even before that happened in 2019, you were  
16 drawing primary opponents out in West Texas; is that  
17 right?

18 **A.** I was.

05:55:36

19 **Q.** I'm going to show you what I'm going to mark as  
20 Defendants' 8. Now, if you flip over to -- if you look at  
21 the top of that page -- and again, just for purposes of  
22 the record, I'm marking this as 8; but this is also  
23 Exhibit 14 to the response to the preliminary injunction.

05:56:04

24 So if you'll look at the cover page there, just so  
25 you're clear on what it is.

1 A. Okay. Oh, yeah.

2 Q. So that's also in the record.

3 A. Okay.

4 Q. Have you ever seen this document before?

05:56:11 5 A. Oh, I'm sure I have in a newspaper or something.

6 Q. Well, on the top of the first page it says "Office of  
7 the Secretary of State." Do you see that?

8 A. Yes.

9 Q. And below that it says "race summary report"; is that  
05:56:25 10 right?

11 A. Yes.

12 Q. And below that it reads "2014 Republican Party primary  
13 election." Did I read that correctly?

14 A. Correct.

05:56:31 15 Q. And the date is March 4th, 2014, right?

16 A. Yes.

17 Q. Now, if you'll flip over to the next page.

18 A. Hold on just one second. Okay.

19 Q. On that page, from the top going down to the third  
05:56:50 20 election there, it says "State Senator District 31"?

21 A. Correct.

22 Q. Do you see that?

23 A. Yes.

24 Q. Now, you would agree with me that Midland Mayor Mike  
05:57:00 25 Canon, a conservative Republican, challenged you in 2014

1 in the Republican primary, right?

2 **A.** Yes.

3 **Q.** And these numbers show that he came within five points  
4 of beating you in the primary; is that right?

05:57:08

5 **A.** He did.

6 **Q.** So even in 2014 you were drawing challengers, and you  
7 would agree with me that within five points is pretty  
8 close, right?

9 **A.** Yeah. It was pretty close.

05:57:18

10 **Q.** It's fair to say that at least half of the district  
11 out there that voted in the primary wanted Mike Canon,  
12 right?

13 **A.** More than half wanted me.

05:57:32

14 **Q.** I'm going to show you what I'm going to mark as  
15 Defendants' 9. And for purposes of identification on the  
16 record, I'm marking this for the exhibit list as  
17 Defendants' 9. This is also Exhibit 15 in response to  
18 Brooks plaintiffs' preliminary injunction.

05:58:10

19 Go ahead and take a look at that and tell me when  
20 you're finished.

21 **A.** I'm done.

22 **Q.** There at the top of the first page it reads, "Office  
23 of the Secretary of State." Do you see that?

24 **A.** Yes.

05:58:18

25 **Q.** And, again, this is a race summary report but this

1 time from the 2018 Republican Party primary election; is  
2 that right?

3 **A.** Correct.

4 **Q.** And the date on this is March 6th, 2018; is that  
5 right?

6 **A.** Yes.

7 **Q.** Now, in the 2018 primary you avoided a runoff by just  
8 .4 percent or 323 votes with, again, Mike Canon being the  
9 runner-up; is that right?

10 **A.** Yes.

11 **Q.** Getting closer, right?

12 **A.** Yeah. Not close enough.

13 **Q.** So in 2014 you draw a primary challenge. 2018 you  
14 draw a primary challenge. 2019 you are stripped of your  
15 committee seats. Right?

16 **A.** Uh-huh.

17 **Q.** So are you ready to agree with me you are falling out  
18 of favor as early as 2014 with the Republican Party in  
19 Texas?

20 **A.** With the Republican Party, but most pronouncedly with  
21 the Texas Public Policy Foundation and Power Texans who  
22 financed a lot of this opposition.

23 **Q.** You would agree that there were certain agenda items  
24 of Governor Patrick that you opposed in the 2019 regular  
25 session; is that right?

1 A. No. In the 2017 regular session.

2 Q. 2017. And those would be property tax reform, right?

3 A. Well, it was tax caps and public -- private school  
4 vouchers.

06:00:13

5 Q. And both of those you took a position opposite the  
6 Lieutenant Governor, right?

7 A. I did, and both measures passed the Senate.

8 Q. And you also took a position opposite the Governor  
9 that session on those pieces, right?

06:00:28

10 A. Yes.

11 (Video deposition of Senator Kel Seliger paused.)

12 MR. DUNN: Shall we conclude there today, Your  
13 Honor?

06:00:38

14 JUDGE GUADERRAMA: Yes, sir. It's 6:00, and  
15 we'll resume tomorrow at 9:00. We are in recess until  
16 then.

17 THE MARSHAL: All rise.

18 (Proceedings adjourned at 6:00 p.m. and continued in  
19 Volume 4.)

20 Date: February 7, 2022

21 **COURT REPORTER'S CERTIFICATE**

22 I, Laura Wells, certify that the foregoing is a  
23 correct transcript from the record of proceedings in the  
above-entitled matter.

24 \_\_\_\_\_/s/ Laura Wells

25 Laura Wells, CRR, RMR